

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION**

Simon Bernstein Irrevocable  
Insurance Trust Dtd 6/21/95, et al.,

Plaintiffs,

v.

Heritage Union Life  
Insurance Co., et al.,

Defendants.

Case No. 13-cv-3643  
Judge John Robert Blakey

Filers:  
Eliot Ivan Bernstein, Pro Se

**MEMORANDUM OF LAW IN OPPOSITION TO INTERVENOR'S MOTION FOR  
SUMMARY JUDGMENT**

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Third-party Defendant, Eliot I. Bernstein, pro se, for his Memorandum of Law in Opposition to the Intervenor's Motion for Summary Judgment, pursuant to Local Rule 56.1(b)(2), states as follows:

**INTRODUCTION**

Intervenor Brian O'Connell, on behalf of the Estate of Simon Bernstein, has moved for Summary Judgment on the complaint for Declaratory relief and under Count II of the Plaintiff's Amended Complaint for entitlement of the proceeds deposited with this Court allegedly under a Life Insurance Contract as the "default beneficiary" by operation of law claiming the Plaintiffs are not capable of meeting their burden of proving the existence of a 1995 Trust by clear and convincing evidence. Intervenor's motion of May 21, 2016 comes shortly after this Court issued its Decision and Order of March 15, 2016 denying Summary Judgment to Plaintiffs.

This Court concluded in its March 15, 2016 Order as follows:

"Based on the evidence in the record, and "construing all facts and reasonable inferences in the light most favorable to the nonmoving party," the Court finds that there are genuine issues of material fact as to whether the Trust was executed and, if so, upon what terms. There remains a triable issue of fact such that a

“reasonable jury could return a verdict for the non-moving party,” Liberty Lobby, 477 U.S. at 255, and therefore summary judgment is inappropriate. Plaintiffs’ motion is denied with regard to Count II.” See, ECF No. 220, MEMORANDUM Opinion and Order Signed by the Honorable John Robert Blakey on 3/15/2016.

Despite this Court just recently finding that there are Triable issues of fact, the Intervenor’s Motion for Summary Judgment does nothing to remove those Triable issues of fact and appears as nothing more than re-arguing to this Court that the Plaintiffs can not make out their case and thus the funds must go to the Estate by default. The Intervenor has brought nothing more to the Court in the way of evidence or affidavit despite the fact that this Court found in its Decision and Order that Plaintiffs had provided some evidence to support their position, stating in reference to the evidence and positions advanced by the Plaintiffs, “While the above sources do provide some evidence that the Trust was created, as Plaintiffs contend, that evidence is far from dispositive of the issue.”. The Intervenor has failed to come forward with proof and evidence to remove the triable issues found and the absence of material facts in dispute and must be denied.

Simply stated, the Intervenor’s Motion does nothing to resolve the Triable issues of fact already determined by this Court in its March 15, 2016 Opinion and Order and therefore the Intervenor’s have not met their burden of proof to be awarded Summary Judgment in favor of the Estate. Even beyond the “triable” issues that this Court has already determined presently exist which prevents Summary Judgment, there are multiple outstanding issues of material fact as raised in my original opposition to Plaintiff’s Summary Judgment which prevent an award in favor of the Estate at this time, most notably the existence of the Primary Beneficiary which was LaSalle National Trust, NA (“LaSalle”) and the failure of the parties to properly determine from a proper successor to La Salle their interest as primary beneficiary. In fact, Plaintiffs claim Bank of America (BOA) to be successor , while Third Party Plaintiff Eliot states that it is Chicago Title

as BOA only acquired the banking division of LaSalle and not the trust company. Either way, no party has obtained any production from any of those parties ( of if so, such has not been brought forth to the Court or other parties ) and BOA was let out of this action without making any pleading whatsoever despite Plaintiffs claim they are the successor to the Primary Beneficiary LaSalle. Non-movant Third-party Defendant previously moved during the opposition to Plaintiff's summary judgment that these parties should be brought back into the case and Discovery re-opened. Either way, there is presently material issues of fact as to the Primary Beneficiary's claim to the proceeds sufficient to defeat the Intervenor's motion at this time. Still further, under the present state of facts and circumstances the most likely finding of a reasonable jury at this stage is reasonably in my favor as the non-moving party such that collusion and conspiracy exist specifically designed to suppress and deny from this Court and the true beneficiaries the proper, actual policy, the proper actual Trust and the proper, actual terms of both. A reasonable jury could certainly find that the Estate, by and through its trial counsel in Illinois and the office of Brian O'Connell as alleged Personal Representative of the Estate of Simon Bernstein has specifically determined and colluded not to seek the very documents and proof which would show the actual policy and likely actual Trust.

All of these matters already exist on the face of the records before this Court and the Court could deny the Intervenor's motion without my opposition. Nonetheless, my Affidavit-Declaration and opposition herein further creates the existence of triable issues of fact that prevents Summary Judgement in favor of the Estate at this time.

### **ARGUMENT**

Summary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Spurling v. C & M Fine

Pack, Inc., 739 F.3d 1055, 1060 (7th Cir. ). The party seeking summary judgment has the burden of establishing that there is no genuine dispute as to any material fact. See Celotex Corp. v.

Catrett, 477 U.S. 317, 323 (1986). Thus, it is the Intervenor's burden to show no genuine dispute as to any material fact and that the Intervenor is entitled to Judgment as a matter of law.

The Intervenor's motion does nothing to dispel the triable issues of fact this Court already found when issuing its March 15, 2015 Order denying Summary Judgment to the Plaintiffs. Because the Intervenor has failed to meet this burden, Summary Judgment must be denied.

There is clearly proof that some policy existed as over \$1.5 million has been deposited into this Court's registry by an insurance carrier. The terms of the policy, the value of the policy, the conditions of the policy, however, are all in dispute. As shown by my Affidavit-Declaration, having been in business working with Simon Bernstein on Life Insurance and knowing his work in Life Insurance for over 30 years and knowing his expertise in asset protection, the only likely reasonable conclusion a Jury could arrive at is that there is in fact an actual Policy that is being suppressed and denied ( or hidden or destroyed ), and likely that there is an actual Trust that is the beneficiary, also which is being suppressed and denied ( or hidden or destroyed ).

According to TS TS003942 from an alleged Heritage letter of Feb. 3, 2012 in the months prior to my father's passing, La Salle National Trust, N.A., was the Primary beneficiary, see TS 003942<sup>1</sup>.

There has been insufficient determination by any alleged successor to La Salle National Trust, N.A., of what the Primary Beneficiary's interest in the insurance proceeds are. As moved in the opposition to Plaintiffs' original motion for Summary Judgment, these parties should be properly brought back into the case and Discovery opened to determine the actual policy, discover the actual policy and determine the proper policy amount and beneficiaries. I have asserted and do

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<sup>1</sup> February 03, 2012 Heritage Union Life Confirmation of the Primary and Contingent Beneficiaries <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120203%20Heritage%20Union%20Life%20Statement%20Regarding%20Current%20Primary%20and%20Contingent%20Beneficiaries.pdf>

assert a claim as beneficiary to any such policy both for myself and on behalf of my minor children.

Further, summary judgment is not appropriate “if the evidence is such that a reasonable jury could return a verdict for the non-moving party,” and the Court must “construe all facts and reasonable inferences in the light most favorable to the nonmoving party.” *Liberty Lobby*, 477 U.S. at 255; see also *Carter v. City of Milwaukee*, 743 F.3d 540, 543 (7th Cir. 2014). As shown herein, a reasonable jury could return a verdict for myself as the non-moving party and thus summary judgment is not appropriate.

Under the present facts and circumstances of this case, a reasonable jury could return a verdict in my favor. A reasonable jury could also issue a “no cause” finding that neither side sufficiently proved it’s case. Both such grounds are sufficient to deny summary judgment to the Intervenor at this stage of litigation.

As shown by my Answer and Counterclaims herein, together with my original opposition to the Plaintiffs’ motion for Summary Judgment, and the Petition under the All Writs Act filed with this Court in February of 2016, all of which is incorporated by reference herein in opposition to the Intervenor’s motion, together with my Affidavit-Declaration herein, a reasonable Jury could conclude that the Estate, acting through Illinois trial counsel Stamos and PR Brian O’Connell has colluded with Ted Bernstein and others to suppress and deny from this Court the actual policy ( Policies ), the actual and true Trusts and who the proper beneficiaries are.

A careful review of the Deposition of Ted Bernstein shows:

1. Only a cursory examination by Intervenor Counsel Stamos on any “exhaustive search” performed by Ted Bernstein; no determination of what Ted Bernstein did find; no

questions about whether he was looking in file cabinets, if so where, on computers, if so which ones and where, in desk drawers, if so when and where, nothing.

2. Ted Bernstein admits to having seen the policy and even having documents but yet not only does Ted Bernstein not produce these to the Court or myself and parties, Intervenor Counsel Stamos has continuously failed to move for Ted Bernstein to produce such items to the Court;
3. Meanwhile, as shown by the Petition for All Writs of Feb. 2016, PR Brian O'Connell never moved to obtain all the records of Simon's Estate from Ted Bernstein's counsels Tescher and Spallina despite a Court Order of Florida Judge Colin in Feb. 2014 and PR O'Connell for the Estate still has failed to obtain such compliance and obtain such records to this day.

As seen in Ted Bernstein's Deposition,

Page 18 Line 25

25 · · · · Q · Now, you describe there that you participated

Page 19 Lines 1-16

1 · in and conducted diligent searches of your father's  
2 · home, office and condominium, and some further activity  
3 · following that. Can you tell me when those searches  
4 · took place relative to his death?  
5 · · · · A · No, I can't.  
6 · · · · Q · Can you give me a time range? If you think  
7 · about the date of his death being in September, did you  
8 · do that search October, November, December?  
9 · · · · A · I really -- I don't know the dates.  
10 · · · · Q · Who else searched, or who searched with you,  
11 · if that's different?  
12 · · · · A · I don't believe that anybody else searched  
13 · with me.  
14 · · · · Q · Did anyone search separately for documents?  
15 · · · · · MR. SIMON: Object --  
16 · · · · A · No.

Page 32 Ted's Depo - Lines 3-18

3 · · · · Q · Look at page 59 -- I'm sorry, paragraph 59 on  
4 · Page 9, please, and in that first sentence, it says,  
5 · "During the application process, the insurer conducted a  
6 · routine underwriting investigation of Simon Bernstein  
7 · prior to approving his policy." How do you know that?  
8 · · · · A · From conversations with counsel, and also  
9 · there were a lot of documents that the insurance company  
10 · sent over to me at the time that this policy was going  
11 · through the reinstatement process. So these are all  
12 · pretty common things for -- for me to see in -- in an  
13 · insurance company's document like that.  
14 · · · · · I'm -- I'm -- I think it would be also in  
15 · something about an application process that may have  
16 · been through the discovery of the documents that the  
17 · insurance company provided in that reinstatement  
18 · process.

Page 116 Ted Bernstein Deposition Lines 18-22

18 · · · · A · I believe I have a copy of what the insurance  
19 · company sent during this time of reinstatement. I  
20 · believe I have a copy of the insurance policy. Whether  
21 · executed, I -- I don't know what they deem executed.  
22 · · · · Q · You have a copy of the insurance policy, okay.  
23 · Have you given that in your production?  
24 · · · · · MR. SIMON: Objection; misstated his answer.  
25 · · · · Q · I asked you did you put it in production. You

Page 117 Lines 1-25

1 · haven't answered.  
2 · · · · · MR. SIMON: He said he saw it in production.  
3 · · · · He said what was produced.  
4 · · · · Q · No. I asked you, did you put your copy of the  
5 · policy in production. You were supposed to --  
6 · · · · · MR. SIMON: No, you didn't.  
7 · · · · Q · -- put all your documents.  
8 · · · · · MR. SIMON: That's not what you said. That's  
9 · · · · not what he said. He said he found the documents  
10 · · · · through production.  
11 · · · · Q · Did you put the policy in with your production  
12 · documents?  
13 · · · · A · I'm not sure.

14 · · · · Q · · You were asked by the court to produce  
15 · documents. Did you produce all your documents?  
16 · · · · A · · I don't know if I was asked by a court to  
17 · produce documents, but...  
18 · · · · Q · · Okay. We had to do a Rule 26 document  
19 · request. You're the plaintiff. You produced documents.  
20 · · · · · MR. SIMON: I'm going to object to this line  
21 · · · · of questioning. He has answered about the policy.  
22 · · · · He believes he had a copy. He's not sure if --  
23 · · · · Q · · You believe you had a copy --  
24 · · · · · (Cross-talking. Interruption by the  
25 · reporter.)

Page 118 Lines 1-4

1 · · · · Q · · Did you put the copy of the policy you claim  
2 · to have with your production to the court when you  
3 · produced?  
4 · · · · A · · I'm not sure.

See attached Exhibit 1 - May 06, 2015 Deposition of Ted Bernstein

The Court is directed to the exchange with Adam Simon who interrupts the testimony of Ted Bernstein to “change” the responses. This occurred on other occasions during the Deposition of Ted Bernstein. As also shown by the Deposition, the questioning was abruptly cut off at the end and the need for further Deposition and Discovery against Ted Bernstein and Plaintiffs and other parties is clear.

Yet, not only has Trial Counsel Stamos continually failed to take action to force production by Ted Bernstein in this Illinois case, PR O’Connell in the Florida Probate case has likewise deliberately disregarded seeking Discovery and proper Deposition of Ted Bernstein in those cases.

As this Court noted in its Order denying Summary Judgement to Plaintiffs, “In the course of their attempts to obtain the policy proceeds, the Bernstein siblings discussed using a different trust that had been established by Simon Bernstein – the “2000 Trust.” Intervenor’s Ex. A at

37:4-18; 48:21- 49:19; Dep. Ex. 1. That option was rejected because Pam Simon was not included as a beneficiary of that trust. Id. The 2000 Trust is important, however, in that it identifies the proceeds of the policy at issue here as an asset of that trust. Intervenor's Ex. A, Dep. Ex. 23 at Schedule A. The 2000 Trust does not refer to an alleged 1995 trust, which the 2000 trust would have superseded."

Further, this Court noted, "Plaintiffs have offered testimony that, when Simon Bernstein took his trust to be executed at his law firm (then Hopkins & Sutter), the firm changed the identity of the successor trustee. This implies that the firm would have had an electronic version of the Trust, and possibly a hard copy. David Simon testified that the firm was contacted to see if it had a copy of the executed trust and did not; but David Simon could not recall who contacted the firm, which attorneys were contacted, or if he himself reached out to the firm at all. Intervenor's Ex. B at 44:12-45:15; 46:22- 47:15."

Still further, " The purported trust documents, Exhibit 15 and 16, contain inconsistencies as to who would serve as the trustee. Exhibit 16 lists the potential trustees as "Shirley," "David," and an illegible name. It then lists the successor trustees as "Pam, Ted." Exhibit 15 lists Shirley as the trustee, and David B. Simon as the successor trustee. However, when the Trust first made a claim to the insurance company, it represented that an attorney by the name of Spallina was the trustee. Intervenor's Ex. B at 59:13-60:3; 81:15-83:12. Despite all of this, in the current proceeding the Plaintiffs claim that Ted Bernstein is the trustee."

As shown in Tescher and Spallina production documents, according to TS TS005879, on Aug. 23, 2012 shortly before his passing Tescher and Spallina Billed Simon Bernstein for Estate Planning and Insurance work as follows:

“FOR LEGAL SERVICES RENDERED through July 31, 2012 in connection with estate planning, including meeting with client to finalize planning items; telephone calls and email **correspondence with Diana regarding existing insurance matters** and status of GC Trust transfers from Oppenheimer to JP Morgan; finalize EP documents and meet with client to execute same.” See, TS005879<sup>2</sup>. Yet not only has Illinois Trial Counsel Stamos not pursued these matters further for the Estate, but PR O’Connell has likewise not pursued any such actions in the Florida Probate courts to clarify these matters.

Thus, clear actions by multiple parties to manipulate what documents were presented to this Court is shown while clear actions needing further Discovery such as who was allegedly contacted at Hopkins-Sutter etc, exist, and yet neither Trial Counsel Stamos nor PR O’Connell has pursued actions to determine the truth in any of these matters and thus material issues of fact remain preventing summary judgment.

As shown in the All Writs Petition, this is a pattern amongst these alleged “fiduciaries” and attorneys as PR O’Connell’s Office and Ted’s counsel Alan Rose are intertwined in other items of Tangible personal property missing, unaccounted for, and items from 7020 Lions Head Lane showing up “magically” even after O’Connell’s office had allegedly already removed such items. See Motion for All Writs Injunction ECF Docket #214 Paragraphs 75-103 and the Petition in it’s entirety.

Direct collusion between PR Brian O’Connell and Ted Bernstein is shown not only in PR O’Connell’s abandoning of the Estate in a “validity” hearing and failure of O’Connell and Trial Counsel Stamos to pursue proper Discovery and sanctions against Ted Bernstein in this Illinois

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<sup>2</sup> August 23, 2012 Tescher and Spallina Bill for Insurance Services  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120823%20Tescher%20Spallina%20Bill%20for%20Insurance.pdf>

case, but is directly shown in a recent motion filed by Ted Bernstein in the Florida Probate Court where Brian O'Connell as PR is allowing Ted Bernstein and his attorney Alan Rose to come in and "Represent" the Estate ad litem in an action against William Stansbury who is the party who has actually been paying the fees of Trial Counsel Stamos for this action in Illinois. The conflicts and collusion are clearly set out in counsel Peter Feaman's opposition to the motion. See Exhibit 2 - August 26, 2016 Filing of Attorney at Law Peter Feaman, Esq.

This Court is respectfully reminded of the "side deals" and requests to use "inherent powers" as Petitioned in the All Writs application at least for purposes of consideration on this opposition to Summary Judgment. See, ECF #214 All Writs.

Moreover, the Affidavit-Declaration attached herein as Exhibit 3 - Eliot Ivan Bernstein Affidavit dated August 26, 2016 which reflects testimony I would provide at Trial demonstrating meticulous record keeping by Simon Bernstein for decades, describing distinct sources of record keeping, his expertise in asset protection and his 50 years in Life Insurance all leads to the reasonable conclusion a jury could reach which is that a Policy exists, a Trust likely exists, but collusion and conspiracy to suppress and deny the actual documents has occurred by the Estate and Ted Bernstein parties which creates sufficient issues of material fact in addition to the issues raised herein to deny Summary Judgment to the Intervenor at this time.

### **CONCLUSION**

**WHEREFORE**, for all of the foregoing reasons, the Intervenor's motion for Summary Judgment must be denied at this stage of litigation and further Discovery ordered including Ordering Production by Ted Bernstein of all documents he allegedly provided to Tescher and Spallina including copies of the Policies and Ordering parties such as LaSalle National Trust,

N.A. or its successor, Jackson-Heritage and necessary parties back into the case and for such other and further relief as may be just and proper.

DATED: August 26, 2016

**/s/ Eliot Ivan Bernstein**  
Third Party Defendant/Cross  
Plaintiff PRO SE  
Eliot Ivan Bernstein  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 26, 2016 I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified below via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner.

**/s/ Eliot Ivan Bernstein**  
Third Party Defendant/Cross  
Plaintiff PRO SE  
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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF ILLINOIS  
3 EASTERN DIVISION

4 SIMON BERNSTEIN IRREVOCABLE  
5 INSURANCE TRUST DTD 6/21/95,

6 Plaintiff,

v.

Case No. 13 cv 3643

7 HERITAGE UNION LIFE INSURANCE  
8 COMPANY,

9 Defendant,

10 HERITAGE UNION LIFE INSURANCE  
11 COMPANY,

12 Counter-Plaintiff

13 v.

14 SIMON BERNSTEIN IRREVOCABLE  
15 INSURANCE TRUST DTD 6/21/95

16 Counter-Defendant

17 and,

18 FIRST ARLINGTON NATIONAL BANK  
19 as Trustee of S. B. Lexington, Inc.  
20 Employee Death Benefit Trust,  
21 UNITED BANK OF ILLINOIS, BANK OF  
22 AMERICA, Successor in interest to  
LaSalle National Trust, N. A., SIMON  
BERNSTEIN TRUST, N. A., TED BERNSTEIN,  
individually and as purported Trustee  
of the Simon Bernstein Irrevocable  
Insurance Trust Dtd 6/21/95, and  
ELIOT BERNSTEIN

23 Third-Party Defendants.  
24 \_\_\_\_\_/



1 ELI OT I VAN BERNSTEI N,

2 Cross-Pl ai nt i ff

3 v.

4 TED BERNSTEI N, i ndi vi du al l y and as  
5 al l ege d Tru st ee of the Si mon Bern stei n  
Irrevo cabl e Insuranc e Tru st Dtd  
6/21/95,

6 Cross-Def endant

7 and,

8 PAMELA B. SI MON, DAVID B. SI MON, both  
9 Profession al l y and Person al l y, ADAM  
10 SI MON, both Profession al l y and Person al l y,  
THE SI MON LA W FI RM, TESCHER & SPALLI NA,  
11 P. A. , DONALD TESCHER, both Profession al l y  
and Person al l y, ROBERT SPALLI NA, both  
12 Profession al l y and Person al l y, LI SA  
FRI EDSTEI N, JI LL I ANTONI , S. B. LEXI NGTON,  
13 I NC. EMPLOYEE DEATH BENEFIT TRU ST, S. T. P.  
ENTERPRI SES, I NC. , S. B. LEXI NGTON, I NC,  
14 NA TIONAL SERVI CE ASSOCI ATI ON (OF FLORI DA),  
NA TIONAL SERVI CE ASSOCI ATI ON (OF I LLI NOI S),  
AND JOHN AND JANE DOES

15 Thi rd- Party Def endants.

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16 DEPOSI TI ON OF  
17 TED BERNSTEI N

18 Taken on behal f of the Estate of Si mon Bern stei n

19  
20 DATE TAKEN: May 6, 2015  
21 TIME: 5:06 p. m. - 8:15 p. m.  
22 PLACE: 2385 N. W. Executi ve Center Drive  
23 Boca Raton, Florida

24 Stenographi call y Reported by:

25 Li sa Gropper, R. P. R. , F. P. R.



1 APPEARANCES

2 ON BEHALF OF TED BERNSTEIN:

3 ADAM M. SIMON, ESQ.  
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Chicago, Illinois 60601

7 ALAN B. ROSE, ESQ.  
8 MRACHEK, FITZGERALD, ROSE, KONOPKA,  
9 THOMAS & WEISS, P. A.  
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West Palm Beach, Florida 33401

10 ON BEHALF OF THE ESTATE OF SIMON BERNSTEIN:

11 JAMES J. STAMOS, ESQ.  
12 KEVIN P. HORAN, ESQ.  
13 STAMOS & TRUCCO, LLP  
14 One East Wacker Drive  
Suite 300  
Chicago, Illinois 60601

15 ELIOT BERNSTEIN, PRO SE  
16 2753 NW 34th Street  
17 Boca Raton, Florida 33434

18 ALSO PRESENT: William Stansbury  
19 Candice Bernstein (as noted)

20 - - -



## I N D E X

Witness	Direct	Cross	Redirect	Recross
Ted Bernstein				
(By Mr. Stamos)	6		118, 120	
(By Mr. Eliot Bernstein)		94		115, 121
(By Mr. Simon)		113		119

- - -

## EXHIBITS

Exhibit	Description	Page
1	Email chain Bates stamped TS4965 through TS4966	33
2	Email chain Bates stamped TS4489 through TS4492	50
3	Email from Pam Simon dated December 6, 2012	54
4	Email chain Bates stamped BT67 through BT70	55
5	Email chain Bates stamped BT65 through BT66	57
8	Email chain Bates stamped BT48 through BT50	58
9	Email chain Bates stamped BT51 through BT52	59
10	Email chain Bates stamped BT47	60
11	Email chain Bates stamped TS4464 through TS4466	62



## EXHIBITS (Cont'd)

Exhibit	Description	Page
14	Email chain Bates stamped TS6578 through TS6579	66
15	Email chain Bates stamped TS6508 through TS6512	67
16	Email chain Bates stamped TS5252 through TS5255	69
17	Email chain Bates stamped TS6547 through TS6549	71
18	Email chain Bates stamped TS7019 through TS7020	75
19	Affidavit of Ted Bernstein	11
21	Trust draft Bates stamped BT2 through BT12	13
22	Trust draft Bates stamped BT13 through BT21	13
23	Simon Bernstein 2000 Insurance Trust dated August 15, 2000	77
24	Simon L. Bernstein Amended and Restated Trust Agreement	78
25	Simon L. Bernstein Irrevocable Trust Agreement	78
26	Document titled "Text of Pam's Notes 1 & 2" with two pages and handwritten notes attached	90
A	Palm Beach County Sheriff's Office Offense Report	108
	- - -	



1 THE COURT REPORTER: Do you swear or affirm  
2 that the testimony you're about to give will be the  
3 truth, the whole truth, and nothing but the truth?

4 THE WITNESS: I do.

5 DIRECT EXAMINATION

6 BY MR. STAMOS:

7 Q State your name for the record, please.

8 A Ted Bernstein.

9 Q Where do you reside, Mr. Bernstein?

10 A 880 Berkeley Street, Boca Raton, Florida.

11 Q Where are you employed?

12 A In Boca Raton, Florida.

13 Q What's the entity that employs you?

14 A Life Insurance Concepts.

15 Q How long have you been in that business?

16 A Approximately 15, 16, 17 years.

17 Q Were you engaged in the insurance business  
18 before working with Life Concepts?

19 A I was in the insurance business before.

20 Q With who?

21 A Primarily for myself.

22 Q Were you employed by yourself or were you an  
23 employee of some other person or entity?

24 A I was employed by companies that I set up.

25 Q Can you just tell me generally -- I don't need



1 a lot of detail, but what was the nature of it? Was it  
2 mostly life insurance?

3 A Yes, it was.

4 Q Do you hold a license of any kind in Florida?

5 A I do.

6 Q What kind of license do you hold?

7 A A life insurance license: Life, accident and  
8 health insurance.

9 Q Do you hold a license in any other state?

10 A I believe I do.

11 Q What other state or states?

12 A I can't remember off the top of my head.

13 Q What are the candidates for states in which  
14 you might hold a license?

15 MR. SIMON: Objection; speculation.

16 You can answer.

17 A I can't -- I really can't remember. There's a  
18 lot of states, and at different times we will do  
19 business in those states and get a nonresident license.  
20 I really can't remember.

21 Q Let me ask you this: Did you ever have a  
22 resident license in any other state?

23 A I did.

24 Q What state is that?

25 A Illinois.



1 Q Is that license still active?

2 A My resident license is not.

3 Q Okay. Has any license, resident or otherwise,  
4 in any state ever been disciplined or restricted in any  
5 way?

6 A I don't recall. I don't think so.

7 Q Can you tell me what status you now have with  
8 respect to the Estate of Simon Bernstein.

9 MR. SIMON: Objection; vague.

10 Q Do you understand my question?

11 A I don't understand the word "status".

12 Q Well, do you have any official role in any  
13 official capacity with regard to the estate itself or  
14 any entities or structures that relate to the estate?

15 MR. SIMON: Objection; vague.

16 A I believe I do; as trustee.

17 Q Of what are you trustee?

18 A Simon Bernstein Trust.

19 Q What is the year of that trust?

20 A I don't recall.

21 Q You are also a plaintiff in the case that's  
22 pending in Chicago; is that correct?

23 A Yes.

24 Q So have you perceived any divergence of  
25 interest or any conflict of interest in having a role



1 with respect to the trust and the estate while  
2 simultaneously being a plaintiff in the case in Chicago?

3 A I do not.

4 Q As the trustee of the trust, the Simon  
5 Bernstein Trust, will the proceeds of the estate, once  
6 they are disbursed, be disbursed to that trust of which  
7 you are a trustee?

8 MR. SIMON: Objection; speculation.

9 Q To your knowledge, is that your understanding  
10 of the mechanics of it?

11 A I do believe that that's correct.

12 Q And you agree that, if you are successful as a  
13 plaintiff in the Chicago case, the amount of assets  
14 available in the estate to be disbursed to the trust of  
15 which are you a trustee will be reduced, correct?

16 A Could you -- could you ask me that in a  
17 different way?

18 Q Yes. If you are successful as a plaintiff in  
19 the Chicago case and the proceeds of the insurance  
20 policy regarding which we are all litigating is  
21 disbursed to the plaintiffs in the Chicago case, those  
22 funds will not be disbursed to the estate. You  
23 understand that?

24 A I do.

25 Q And, therefore, the estate will have less



1 funds to disburse to the trust of which you are a  
2 trustee. Do you understand mechanically that's what  
3 would happen in that circumstance?

4 A I -- I do.

5 Q So you don't perceive a conflict in those  
6 roles?

7 A I do not.

8 Q Okay. Now, the date of your father's death  
9 was September 13, 2012, correct?

10 A Yes.

11 Q Prior to the time that your father died, were  
12 you aware of the existence of any trust with regard to  
13 any life insurance policy?

14 MR. SIMON: Objection; vague.

15 A Can you define "existence"?

16 Q Well, when did you first learn that -- well,  
17 strike that.

18 In the lawsuit in Chicago, you're aware that  
19 the plaintiffs are promoting the notion that there is a  
20 1995 insurance trust which should receive the funds of  
21 the insurance proceeds, correct?

22 A Correct.

23 Q When did you first become aware of the  
24 existence of the trust that is being promoted as the  
25 beneficiary in the Chicago case?



1           A     I'm not sure that I can recall when I first  
2 remembered when there was a trust.

3           Q     Did you learn of it before or after your  
4 father passed away?

5           A     Before.

6           MR. STAMOS: I just want to get oriented  
7 mechanically here. What we did was we have a bunch  
8 of exhibits that we sent down, and the court  
9 reporter was kind enough to break them into  
10 exhibits so that we could use them with some ease.  
11 I think there should be more than one set there I'm  
12 hoping. And so we'll address those in a moment.  
13 Among them would be the affidavit that was  
14 submitted in support of the Motion for Summary  
15 Judgment. I'm wondering if the court reporter  
16 could give that to the witness now, and it is  
17 Exhibit 19.

18                   (Exhibit 19 was marked for identification.)

19           Q     (By Mr. Stamos) Now, first of all,  
20 Mr. Bernstein, can you tell me, who drafted this  
21 affidavit?

22           A     Can you explain -- help me with the term  
23 "draft"?

24           Q     Who wrote it? Who created it? I'm not sure  
25 how to put it otherwise, but let's start with that.



1 A Counsel and -- and me, I guess.

2 Q Mr. Simon --

3 A Correct.

4 Q -- and you?

5 A Correct.

6 Q What did you understand the purpose of the  
7 affidavit to be?

8 A To create a record of what my understanding  
9 was of the questions being addressed here.

10 Q Now, if I could ask you, please, to look at --  
11 I think it's the -- I don't know what page it is, but  
12 it's -- I guess at the top it's Page 6 of 20, if you  
13 look up there, and paragraph 25. Do you see that?

14 A I do.

15 Q Now, that paragraph says that, "I, Ted  
16 Bernstein, as trustee of the Bernstein Trust, retained  
17 plaintiff's counsel and initiated the filing of this  
18 action."

19 Now, the first question I have for you is  
20 what's the basis for your assertion that you are the  
21 trustee of the Bernstein Trust?

22 A What is the basis of my understanding?

23 Q Yeah.

24 A I guess a couple of different things would be  
25 the basis of my understanding.



1 Q What are they?

2 A David Simon told me I was the successor  
3 trustee.

4 Q Okay.

5 A I've seen documents that would lead me to  
6 believe that I was a successor trustee in some of the  
7 notes that were in the documents that I've seen.

8 Q What documents are those?

9 A Trust documents.

10 Q Which trust documents are you referring to?

11 A I'm referring to the trust document that owned  
12 this trust. I mean owned this policy.

13 Q So do we share the understanding that no one  
14 has located an executed copy of the 1995 trust?

15 A We do.

16 Q I have Exhibits 21 and 22. I would ask the  
17 court reporter to give those to you.

18 (Exhibits 21 and 22 were marked for  
19 identification.)

20 Q Looking at number 21, I understand this to  
21 have been a draft of -- represented to be a draft of a  
22 trust that was found on a computer in the Simon law  
23 office. Have you seen this document before and is my  
24 understanding correct as far as you know?

25 A 21?



1 Q Yeah.

2 (Pause.)

3 Q Does my question make sense or should I  
4 restate it? It was kind of convoluted.

5 A Sure, please.

6 Q So looking at number 21, what do you  
7 understand that to be?

8 A An unexecuted copy of the irrevocable trust  
9 agreement.

10 Q I'll tell you what. When we're talking about  
11 the '95 trust, how about if we both call it the '95  
12 trust? That way we won't confuse ourselves. Because I  
13 think I started by not doing that, and I don't want us  
14 confused. Okay?

15 A The '95 trust, certainly.

16 Q Have you seen this before?

17 A Yes, I have.

18 Q Is this one of the documents you're referring  
19 to as being one of the bases for your belief that you  
20 are the trustee of the '95 trust?

21 A I believe so.

22 Q When I look at Page 10, BT10, paragraph A  
23 refers to the appointment of a successor trustee and it  
24 refers to David Simon, and I'm wondering what about this  
25 document implies to you that you would be the successor



1 trustee.

2 A Well, there's a couple of versions of this  
3 document if my recollection is correct, and -- or maybe  
4 not this document, but maybe forms of this document, and  
5 in another one of the forms of this document I have seen  
6 in this, what I believe would be the same or similar  
7 section, some handwritten notes that listed me as a  
8 successor trustee.

9 Q So, at least for our purposes, what I've shown  
10 you as number 21 does not refer to you, correct?

11 A That's correct.

12 Q All right. We'll get back to 21.

13 Looking at 22 now, if you go to Page 20, I  
14 understand, and tell me if you share this understanding,  
15 that number 22 was a hard copy draft represented to be a  
16 draft of the '95 trust that was found in a file  
17 someplace in the Simon law office. Do you share that  
18 understanding?

19 A I'm -- I'm not sure. Could you repeat that  
20 for me, please?

21 Q Well, have you seen this before?

22 A I have.

23 Q What do you understand it to be?

24 A A version, another version of the -- of the  
25 trust document, of the '95 trust.



1 Q It is also unexecuted, correct?

2 A Yes, it is.

3 Q When you look at Page BT20, do you see that?

4 A I do.

5 Q When you look at paragraph A under article 11,  
6 is that the handwriting you're talking about having  
7 seen?

8 A Yes, it is.

9 Q It says, "If for any reason --," it looks like  
10 it says, "Shirley dead," et cetera, question mark,  
11 right?

12 A Yes.

13 Q Then it says, "Does not continue to act as  
14 trustee," and then it looks like it says, "Pam, Ted,"  
15 right?

16 A Yes.

17 Q Whose handwriting is that, do you know?

18 A I believe it to be David's.

19 Q Did David ever have a conversation with you  
20 about either of these documents, 21 or 22?

21 A No.

22 Q Other than those two documents that I've just  
23 shown you, Exhibits 21 and 22, are you aware of any  
24 other documents that exist that constitute drafts of the  
25 1995 trust?



1 A No.

2 Q So, as far as you know, these are the only  
3 drafts that are in our communal possession, correct?

4 A I believe so.

5 Q Earlier, in beginning to answer one of my  
6 questions, you said that David Simon was a source of  
7 your knowledge that you were the trustee. Did you ever  
8 have a conversation with David in that regard, or  
9 conversations?

10 A About him telling me that I was the successor  
11 trustee?

12 Q Yes.

13 A Yes.

14 Q When was the first time you and he talked  
15 about that?

16 A It was sometime after Simon's death. I would  
17 say after Simon's death.

18 Q Do you have a sense for how long after Simon's  
19 death?

20 A No, I really don't.

21 Q Who was present for that conversation?

22 A Other than he and me, I don't know if anybody  
23 was.

24 Q What did you say to him? What did he say to  
25 you in that conversation?



1 A I don't have any idea.

2 Q Well, did you talk about the '95 trust?

3 A Yes.

4 Q What did you say to him and what did he say to  
5 you?

6 A I can't recall the specifics, but it was about  
7 the fact that there was a trust that was unable to be  
8 located and who the -- the trustees were, who the  
9 successor trustees were.

10 I can't be more specific with you than --  
11 than -- than that. I just don't recall, you know, the  
12 specifics of the conversation at that point in time.

13 Q All right. At the point in time that you had  
14 that conversation, did David have in his possession  
15 either Exhibit Number 21 or Number 22, or had you seen  
16 either of them by then?

17 A I don't believe so.

18 Q Is it fair to say that you didn't see 21 and  
19 22 until sometime after your father died?

20 A That's correct.

21 Q Now, if you would go to -- looking back at  
22 your exhibit now, which is number 19, if you would look  
23 at paragraph 47. Do you see that?

24 A Yes.

25 Q Now, you describe there that you participated



1 in and conducted diligent searches of your father's  
2 home, office and condominium, and some further activity  
3 following that. Can you tell me when those searches  
4 took place relative to his death?

5 A No, I can't.

6 Q Can you give me a time range? If you think  
7 about the date of his death being in September, did you  
8 do that search October, November, December?

9 A I really -- I don't know the dates.

10 Q Who else searched, or who searched with you,  
11 if that's different?

12 A I don't believe that anybody else searched  
13 with me.

14 Q Did anyone search separately for documents?

15 MR. SIMON: Object --

16 A No.

17 Q In paragraph 48 of Exhibit 19, it says, "I am  
18 aware that the documents produced by Plaintiffs in this  
19 matter also contain documents located by David Simon and  
20 Pamela Simon in their offices in Chicago." Do you see  
21 that there?

22 A I do.

23 Q When do you understand they performed a search  
24 of their offices in Chicago for documents relative to  
25 the dispute we're in now?



1 MR. SIMON: Objection; speculation.

2 A I have no idea.

3 Q Well, you said that you're aware. How were  
4 you made aware of that fact?

5 A By learning of it probably from conversations.

6 Q Conversations with whom?

7 A With David Simon, I would imagine.

8 Q But you don't know the source -- you can't  
9 tell me specifically the source of that information,  
10 correct?

11 A Well, you're asking for dates or source?

12 Q Well, source is where I'm going now.

13 A Source, I think it was with -- with David  
14 Simon.

15 Q What documents do you understand were located  
16 and produced that were found in their offices?

17 MR. SIMON: Objection; speculation.

18 Q Well, now, let's make sure we're clear. I'm  
19 never asking you to speculate -- there might be times  
20 that I do ask you to speculate. Sometimes that's a  
21 useful question to ask. So when Mr. Simon says,  
22 "Objection; speculation," I'm asking you to tell me what  
23 you know or you don't know or what you think. So I just  
24 want you to be aware that I'm not asking you to take  
25 wild guesses about things.



1 A Okay.

2 Q All right?

3 A Could you ask me that last question again,  
4 please.

5 Q Now I forget my question.

6 MR. SIMON: Can you read the question?

7 MR. STAMOS: Why don't you read that question  
8 back.

9 (Candice Bernstein enters the room.)

10 (Read back by the reporter.)

11 MR. SIMON: Same objection.

12 Let's just take a one-minute break.

13 (Recess taken.)

14 MR. STAMOS: Was there a question pending?

15 (Read back by the reporter.)

16 THE WITNESS: And -- other than these  
17 documents, I would imagine, that you're asking me  
18 about?

19 Q (By Mr. Stamos) Other than 21 and 22 you mean?

20 A Yes.

21 Q Yes.

22 A Other than 21 and 22. I believe there was a  
23 document that was something to do with a filing to the  
24 IRS concerning the trust. There might have been a -- a  
25 W-9 or something. And I think that might be the extent



1 of it.

2 Q All right. So let's then go to number 88,  
3 paragraph 88. That's page 13 of 20.

4 A 88?

5 Q Yes.

6 A Okay. It's on my Page 12, but okay.

7 Q Oh. If you look at the top, does the top say,  
8 "13 of 20"?

9 A 13 of 20 on the top, it does.

10 Q Yeah, I'm sorry. I think actually we had  
11 those numbered and sent to you, but the copy I had it  
12 made from was never numbered. So we'll refer to it as  
13 Page 12.

14 A Okay.

15 Q All right. So 88, it says here, "In 1995, I  
16 was sharing office space with Simon Bernstein in  
17 Chicago, as was your sister Pam and David."

18 Now, first of all, during what years did you  
19 share office space with your father in Chicago?

20 A About these times, I'm going to say shared  
21 office space in 1980 through 1995-ish.

22 Q In 1995, did you leave for Florida?

23 A Yes. I began --

24 Q Okay.

25 A Yes, I began going to Florida in 1995 back and



1     forth.

2           Q     It says, "In the summer of 1995, Simon  
3     Bernstein discussed with me that he was forming a life  
4     insurance trust with a policy and that I would be named  
5     one of the trustees for the life insurance trust."

6                     Now, who was present for that conversation?

7           A     Of course Simon Bernstein, my father, would  
8     have been present, but other than that I can't remember.

9           Q     After you and he talked about that in 1995,  
10    what was the next time you had any information or  
11    knowledge regarding the existence, creation, changes to,  
12    et cetera, regarding a trust in 1995, dated 1995?

13          A     I believe that would have been maybe a year, a  
14    year and a half prior to my father's death when there  
15    was a -- this -- the policy that was in this trust  
16    lapsed and there was a reinstatement matter, and about  
17    that time it would have -- it would have come up again.

18          Q     When you say, "It would have come up again,"  
19    did you have a conversation with anyone at that time  
20    about the 1995 trust? In other words --

21          A     No.

22          Q     -- at the time that you were addressing the  
23    reinstatement of the policy the year or two before he  
24    died, did you have any conversation with him, not about  
25    the reinstatement of the policy, but about the 1995



1 trust?

2 A No.

3 Q So any other time prior to his death that you  
4 had conversations with anyone about the 1995 trust?

5 A No.

6 Q Now, it says here that he told you you were  
7 going to be one of the trustees. I take it you never  
8 saw an executed trust with you -- period, correct?

9 A Correct.

10 Q So, therefore, you never saw an executed trust  
11 with your name on it as trustee, correct?

12 A Not -- not that I recall.

13 Q Well, when you had the conversation with David  
14 Simon that you described earlier in which you learned  
15 that you were the replacement -- the successor trustee,  
16 did you remember this conversation with your father, or  
17 was that a different topic because in '95 he said you  
18 would be the trustee, not a successor trustee?

19 MR. SIMON: Objection; vague.

20 A So the conversation with David Simon would  
21 have made perfect sense -- based on '88, would have made  
22 perfect sense when he told me that I was, you know,  
23 successor trustee.

24 Q Right. I mean, I know it would have made  
25 perfect sense. What I'm asking you is: Did you hearken



1 back and say, "Oh, yeah, dad told me that," or something  
2 like that?

3 A Oh. I don't recall. I can't remember.

4 Q Then if you would go, please, to paragraph 97,  
5 it says, "Following the death of my father, my sister  
6 Pamela and brother-in-law David conducted searches of  
7 their office files and records and that's where they  
8 located the unexecuted drafts." I take that to be 21  
9 and 22, correct?

10 A Yes.

11 Q Now, referring to the metadata that is in the  
12 last sentence of that paragraph, if you would please  
13 look at Exhibit 21, let me tell you what I understand  
14 the facts to be, and tell me if you share the  
15 understanding. I always get a little confused about  
16 metadata, but where it indicates, "Wednesday June 21,  
17 1995," then says, "Modified," David's told us that's  
18 actually the date the document was created. Does that  
19 sound like your understanding?

20 MR. SIMON: Objection; speculation. This is  
21 not his database. He knows nothing about it.

22 MR. STAMOS: Adam, if you've got an objection  
23 as to form, you may do that, but I don't expect you  
24 to give answers about what he knows or he doesn't  
25 know, because the affidavit says it includes a



1 printout of metadata from the computer file for  
2 this draft indicating it was last modified on  
3 June 21st. So he's got some knowledge; otherwise,  
4 he wouldn't have signed the affidavit. So please  
5 don't tell him what he knows and doesn't know.

6 So I'm going to ask my question again.

7 Q (By Mr. Stamos) When you look at the metadata,  
8 do you understand -- this is my understanding. Do you  
9 understand that, where it says, "Modified Wednesday  
10 June 21, 1995" -- David Simon has told us that's the day  
11 that the document was created. Is that your  
12 understanding of it?

13 MR. SIMON: Objection; speculation.

14 A I just want to make sure that -- could you  
15 help me out and -- where do you want me to look at on  
16 this document in reference to what you're asking me?

17 Q On the page you're looking at, is there --

18 Can you see this (indicating)?

19 Is there a little square box --

20 A Yes, there is.

21 Q -- rectangular box? Okay.

22 So you see those words there about -- on the  
23 second half of it, so to speak, "Created, modified,  
24 accessed"?

25 A Yes, I do now, yeah. Yes.



1 Q What I understand David has testified to, and  
2 I believe it's on Page 90 of his deposition, is that  
3 where it says, "Modified," that was the day it was put  
4 in the computer; where it says, "September 3rd," that  
5 was the day it was re-entered into a new database,  
6 September 3, 2004; and where it says, "September 30,  
7 2013 accessed," that's the day it was taken off of the  
8 computer and ultimately printed so that we could see it.  
9 Do you share that understanding?

10 MR. SIMON: Objection; speculation.

11 A I don't. I don't have any idea what this --  
12 all this means.

13 Q Do you know what date it was that this  
14 document, 21, was taken off of the computer?

15 A I don't.

16 Q Where paragraph 98 says, "The second draft of  
17 the Bernstein trust was located as a hard copy inside a  
18 file folder within the stored files of David Simon," do  
19 you know when that was found?

20 A Back to this document (indicating)?

21 Q Back to Exhibit Number 22, yes.

22 A Okay. Could you ask me that again, please?

23 Q Yeah. If you look at -- do you know when  
24 Exhibit Number 22 was found?

25 A I don't.



1 Q How did you learn it was found?

2 A I learned of it from conversations with David.  
3 I learned of it reading these things. I -- that's, I  
4 guess, the two ways I would have learned about it.

5 Q We're going to go through some emails in a  
6 moment, but I imagine that the discovery of those two  
7 drafts was considered to be an important step in this  
8 case for you, correct?

9 MR. SIMON: Objection; speculation.

10 Q Was it important or not?

11 A I don't know.

12 Q Did you think it was a positive development  
13 from the point of view of the lawsuit, you as a  
14 plaintiff in the Chicago lawsuit, that these documents  
15 were found?

16 MR. SIMON: Objection; relevance.

17 A I thought it was a positive development as a  
18 layperson.

19 Q How did you come to possess them so that you  
20 could look at them? Were they emailed to you from  
21 Chicago?

22 A I don't recall.

23 Q Do you recall seeing them before today,  
24 obviously?

25 A Yes.



1 Q Do you recall seeing him before the lawsuit  
2 was filed in Chicago?

3 A I don't recall.

4 Q Now, a couple of more things about your  
5 affidavit.

6 Some of these things that are in here -- I'd  
7 like you, if you would, to look at paragraph 21, would  
8 you, of Exhibit Number 19. Do you see paragraph 21?

9 A I do.

10 Q Now, the first sentence where it says, "The  
11 Simon Bernstein Irrevocable Insurance Trust dated  
12 6/21/95 is an irrevocable life insurance trust formed in  
13 Illinois as further described below," does that assume  
14 that the trust -- your statement that it is a trust, is  
15 that based upon your understanding that it was executed?

16 A If I'm understanding your question correctly,  
17 yes.

18 Q What's the basis for your understanding that  
19 it was executed?

20 A That -- number one, that David told me that it  
21 was; number two, that there were filings that had tax ID  
22 number. I believe I -- there was a form that may have  
23 been filled out for the insurance company that named the  
24 beneficiary -- I mean -- yeah, that named the life  
25 insurance trust as the beneficiary, and maybe there was



1 an Equifax reporting where I think Simon said --  
2 mentioned that the contingent beneficiary of the life  
3 insurance policy was an irrevocable trust, just --

4 Q But in terms of your father having signed the  
5 document, the knowledge of that is based on what David  
6 Simon told you, correct?

7 A Yes.

8 Q Look if you will, at paragraph 40, which is on  
9 page -- I'm guessing 7 at the bottom.

10 A 40?

11 Q Yes, paragraph 40, the last line of that.  
12 Do you see that?

13 A I do.

14 Q It says, "The vivo was dissolved in 1998 upon  
15 dissolution of S.B. Lexington, Inc." How do you know  
16 that?

17 A I know that from -- from David.

18 Q Where it says, paragraph 41, "Robert Spallina,  
19 Esquire was named a third-party defendant to Eliot's  
20 claims," how do you know that?

21 A I'm not sure how I know it. I just -- I'm not  
22 exactly sure that I even understand that question.

23 Q You don't understand the question or the  
24 assertion in 41?

25 A Your question of how I know something.



1 Q Well, how did you become aware? How did you  
2 become aware of the statement of the fact asserted in  
3 paragraph 41, that Robert Spallina, Esquire was named a  
4 third-party defendant to Eliot's claims? How do you  
5 know that to be true?

6 A Probably from seeing documents where he was a  
7 named defendant.

8 Q Would that also be true with regard to the  
9 succeeding paragraphs, 42, 43, 44?

10 A Okay. So I've read those subsequent  
11 paragraphs. What is the question about them?

12 Q How do you know the facts asserted in those  
13 paragraphs?

14 A Well, they're all different paragraphs about  
15 different things, so some --

16 Q Well, we'll go through them one by one.  
17 That's fine.

18 A Okay.

19 Q How do you know that National Services  
20 Association was named as a third-party defendant to  
21 Eliot's claim?

22 A From seeing documents or from -- and/or from  
23 having conversations with David and counsel.

24 Q How about Benjamin Brown filed a motion to  
25 intervene? How did you know that?



1           A     From conversations with -- with counsel or  
2     seeing documents.

3           Q     Look at page 59 -- I'm sorry, paragraph 59 on  
4     Page 9, please, and in that first sentence, it says,  
5     "During the application process, the insurer conducted a  
6     routine underwriting investigation of Simon Bernstein  
7     prior to approving his policy." How do you know that?

8           A     From conversations with counsel, and also  
9     there were a lot of documents that the insurance company  
10    sent over to me at the time that this policy was going  
11    through the reinstatement process. So these are all  
12    pretty common things for -- for me to see in -- in an  
13    insurance company's document like that.

14           I'm -- I'm -- I think it would be also in  
15    something about an application process that may have  
16    been through the discovery of the documents that the  
17    insurance company provided in that reinstatement  
18    process.

19           Q     Look at paragraph 70, please. It's on Page  
20    10.

21           A     Okay.

22           Q     It says, "On or about June 5, 1992, a letter  
23    was submitted on behalf of the policyholder informing  
24    the insurer that LaSalle National Trust was being  
25    appointed as successor trustee." Did you become aware



1 of that by reviewing documents in this case?

2 A Yes, I believe so.

3 Q Likewise, the June 17, 1992, acknowledgment by  
4 the insurer is also something you learned long after  
5 1992, correct?

6 A Yes.

7 Q That's all I want to talk to you about your  
8 affidavit for now. I want to walk through the emails  
9 with you, if we can. I think they've been numbered.  
10 I'd like to begin with Exhibit Number 1.

11 (Exhibit 1 was marked for identification.)

12 Q Do you have that in front of you? I believe  
13 it's marked Exhibit Number 1 with Bates numbers TS4965  
14 to 4966. Do you see that?

15 A Yes, I do.

16 Q Now, this is dated -- it's a string that  
17 begins, it looks like, on October 15th and ends on  
18 October 19th, if I'm looking at that correctly. So we  
19 have to read the second page first. Okay?

20 A Yes.

21 Q Now, as best I'm able to tell, this is the  
22 earliest email that I have on the subject matter of  
23 obtaining the life insurance proceeds that we're  
24 addressing here. Do you know when the process began, if  
25 this was the beginning of the process or was there



1 effort and discussion about that prior to October 15,  
2 2012?

3 A I do not know.

4 Q What's the first conversation you recall with  
5 anyone after your father's passing about the insurance  
6 policy and the trust and so forth?

7 A My recollection would be with Robert Spallina  
8 and/or Don Tescher.

9 Q If we're looking here at Exhibit Number 1,  
10 Page 2 of that exhibit, on the 15th it looks like Pam  
11 wrote, "Hi all. Do you have time for a status," to  
12 which Spallina writes, "There are no updates at this  
13 time." Does that imply to you that there must have been  
14 communications before October 15th about the insurance  
15 policy?

16 MR. SIMON: Objection; speculation.

17 A No, it doesn't.

18 Q It doesn't?

19 A No.

20 Q So, when he says there are no updates, would  
21 that not imply to you that he knew there was something  
22 to be updated and, therefore, would have been familiar  
23 with the topic?

24 A I -- I'm not sure. There were a lot of things  
25 going on about a lot of topics. So the question "Do you



1 have time for status -- "

2 Q Okay.

3 A -- I -- I can't be sure what led up to the --  
4 to that question being asked without any more guiding  
5 information in that sentence.

6 Q Did you have an understanding that  
7 Mr. Spallina submitted a claim to the insurance company  
8 representing himself to be the trustee of the '95 trust?

9 A Can you ask me that again? There was wind or  
10 something.

11 Q I'm sorry. That's actually a train.

12 Do you understand that Mr. Spallina made  
13 application to the insurance company for the proceeds of  
14 the insurance stating that he was the trustee of the  
15 trust?

16 A I do understand that, yes.

17 Q When is the first time you became aware that  
18 Mr. Spallina was going to make an application  
19 identifying himself as the trustee?

20 A I'm -- I will say after Simon's death  
21 obviously, but other than that, I don't -- I can't tell  
22 you what the time period was.

23 Q Did you ever have a -- were you aware he was  
24 going to do that before he did it?

25 A I was not.



1 Q You were only aware of that after he was --  
2 after he did it?

3 A After he did it.

4 Q How did you become aware of that?

5 A Through conversations with Robert Spallina.

6 Q Look, if you will, at the top of -- I'm sorry,  
7 look at the middle, from Robert Spallina, October 19th,  
8 to Pam Simon, copied to you. Do you see that?

9 A We're on Page 1 now?

10 Q Yes, we are.

11 A Page 1, and you want me to pick up where?

12 Q Where it says, right in the middle, "Pam, my  
13 office is processing."

14 A Yeah.

15 Q Do you see that?

16 A Yes, I do.

17 Q And you were copied on this, correct?

18 A I was.

19 Q It says, "My office is processing --" this is  
20 from Spallina. "My office is processing the claim as  
21 your father was the owner of the policy and the proceeds  
22 will likely be paid to the estate in the absence of  
23 finding the trust."

24 Is it fair to say -- did you understand at  
25 that point it was understood that the trust could not be



1 located, the '95 trust?

2 MR. SIMON: Objection; speculation, form.

3 A Yes.

4 Q Then he says, "As I mentioned previously,  
5 there was a discussion with the carrier about possibly  
6 using the 2000 trust (the one you are carved out of but  
7 would be split five ways according to Ted), but I am not  
8 sure that we will achieve that result." Do you see  
9 that?

10 A I do.

11 Q What was the first conversation you had with  
12 Mr. Spallina about the possibility of submitting the  
13 claim to the insurance company using the 2000 trust?

14 A Around the same time that these discussions  
15 were going on.

16 Q When did you become aware that the 2000 trust  
17 existed?

18 A Around this same time period.

19 Q When you first had that conversation with  
20 Mr. Spallina, what did you say to him and what did he  
21 say to you about using the 2000 trust to submit a claim  
22 to the insurance company?

23 MR. SIMON: Objection; privilege.

24 Don't answer.

25 MR. STAMOS: Privilege? Privilege of who for



1           whom?

2           MR. SIMON: Attorney-client. He was his  
3 attorney. Spallina was his attorney. You're  
4 asking about a conversation between him and his  
5 attorney.

6           Q Well, he was your attorney personally or as  
7 trustee or what?

8           A He was my attorney as trustee.

9           Q Trustee of what?

10          A Shirley Bernstein Trust.

11          Q Did the Shirley Bernstein Trust have an  
12 interest in the insurance policy that we're litigating  
13 about?

14          A It did not.

15          Q So what did the conversation you had with him  
16 about the 2000 trust have to do with your role as  
17 trustee of Shirley's trust?

18          MR. SIMON: Same objection; privilege.

19          Don't answer.

20          MR. STAMOS: Well, I'm not asking for a  
21 conversation. I'm trying to establish -- I think  
22 that you're obligated to establish the basis of a  
23 privilege objection, and I'm entitled to test the  
24 existence of the privilege.

25          You've declared that Mr. Spallina was his



1 lawyer. He's now told me Mr. Spallina was his  
2 lawyer as trustee of Shirley's trust, and he's now  
3 established with me that Shirley's trust had no  
4 interest in the subject matter of the insurance  
5 policy, while we know that Mr. Bernstein has a  
6 personal interest in the result of the insurance  
7 policy. So I don't see how Mr. Spallina was his  
8 lawyer with regard to this topic.

9 Do you have a basis for asserting that?

10 MR. SIMON: He consulted with him as an  
11 attorney on this matter. That's my basis.

12 Q (By Mr. Stamos) Is that true, Mr. Bernstein.

13 THE WITNESS: Answer?

14 MR. SIMON: (Nonverbal response.)

15 A Is it true that I consulted with him about  
16 this matter?

17 Q That you consulted with him about this matter  
18 in a capacity other than as the trustee of Shirley's  
19 trust.

20 And I don't mean to be disrespectful by saying  
21 "Shirley's trust". I'm just shortening --

22 A Sure.

23 Q Is "sure" the answer to my question or  
24 response to my comment there?

25 A Oh.



1 Q I'm sorry, I'm confused.

2 MR. ROSE: Do you want to confer about the  
3 privilege issue if you're confused?

4 MR. STAMOS: I do. I do.

5 Would you please recite the question again to  
6 the witness leaving out my comment about Shirley.

7 MR. SIMON: We're going to take a minute and  
8 confer on a privilege issue.

9 MR. STAMOS: That's a good idea.

10 (Recess taken.)

11 MR. STAMOS: All right. So can we read the  
12 last question back to the witness without my  
13 editorial comment at the end.

14 (Read back by the reporter.)

15 Q (By Mr. Stamos) Can you answer that, please.

16 THE WITNESS: Could you read it back to me  
17 again, please.

18 Q Actually, you know what, let me stop there.  
19 Let me ask a couple of more questions and I'll get back  
20 to that.

21 Would you agree with me that Exhibit Number 1  
22 reflects an email by Mr. Spallina to yourself and to Pam  
23 with regard to the subject matter of the potential use  
24 of the 2000 trust?

25 A Yes.



1 Q And, likewise, the email from yourself at the  
2 top to Mr. Spallina and to Pam is talking generally here  
3 about making the application to the insurance company,  
4 correct?

5 A Correct.

6 Q So you made Pam privy to your conversations  
7 and your communications with Mr. Spallina with regard to  
8 this topic, correct?

9 A Well, I don't know if I made her privy, but  
10 this was a chain of people in -- in this email going,  
11 you know, between two and three people.

12 Q Right. But you were the only one who was the  
13 trustee of Shirley's trust, correct?

14 A Yes.

15 MR. STAMOS: All right. Well, let me just add  
16 that, not only do I still not understand what the  
17 basis for a privilege would be, but if there was a  
18 privilege, it was waived by including Pam in these  
19 communications. So do I need to establish that any  
20 more, Adam, or can I ask more questions?

21 MR. SIMON: It depends what the question is.  
22 If it's about these emails, that's fine. If it's  
23 about conversations between Robert and him  
24 personally, it's not fine. It's privileged.

25 MR. STAMOS: All right.



1 Q (By Mr. Stamos) Were there any other  
2 conversations in which you and Pam and he participated  
3 with regard to the subject matter of the 2000 trust?

4 A No, not that I recall.

5 Q What was the notion behind the potential for  
6 using the 2000 trust?

7 MR. SIMON: Objection; speculation.

8 A I don't know.

9 Q When Mr. Spallina made the application to the  
10 company identifying himself as the trustee of the '95  
11 trust, was he acting as your lawyer at that time?

12 MR. SIMON: Objection; form. I think you said  
13 made an application to an insurance company?

14 Q I thought we established earlier that you were  
15 aware that Mr. Spallina had applied to the insurance  
16 company for distribution of the proceeds to the '95  
17 trust and had done that representing himself to be the  
18 trustee of the '95 trust. Did I hear that correctly?

19 A Yes.

20 Q Okay. When he did that, was he your lawyer  
21 then?

22 A Yes.

23 Q So are you telling us that he submitted that  
24 as your lawyer without your knowledge?

25 A I'm telling you that, if that's what he did as



1 my -- if that's what he did, he was doing it as my  
2 attorney.

3 Q But you're telling me that he did it without  
4 your knowledge?

5 A I'm telling you that, if he did it, he did it  
6 as my attorney. Whether he did it with my knowledge or  
7 not, that's something I think I've said I -- I don't  
8 remember.

9 Q When you say he did it as your attorney, are  
10 you saying he did it as your attorney in your capacity  
11 as the trustee of Shirley's trust?

12 A All my --

13 MR. SIMON: Objection; speculation.

14 MR. STAMOS: Well, I mean, I'm not sure what's  
15 speculative about that.

16 Q Can you answer that question?

17 MR. SIMON: Yeah, I can answer what's  
18 speculative about it. He --

19 MR. STAMOS: No, no, no. I haven't asked you  
20 any questions. I'm asking the witness. I'm not  
21 asking you to explain to the witness now how to  
22 calculate this as being speculative. I'm asking  
23 the question.

24 I'm going to ask the court reporter to read  
25 that question back.



1 (Read back by the reporter.)

2 A I'm saying that my conversations with Robert  
3 Spallina, I viewed him as my counsel. In any  
4 conversations I had with Robert Spallina, I expected  
5 that the attorney-client privilege was there.

6 Q But what I'm trying to get at is, do you have  
7 an understanding as to in what -- because you have --  
8 you wear many hats apparently. Are you saying he was  
9 your attorney in every hat you wore?

10 MR. SIMON: Object to form.

11 Q Do you understand my question?

12 A I believe I do.

13 Q Okay. Are you telling us that he was your  
14 attorney in each of the capacities you have that relate  
15 to the subject matter of this lawsuit?

16 A In these -- in these matters --

17 Q For your father's --

18 A Yes.

19 Q So that would include he was your attorney as  
20 the trustee of Shirley's trust; he was your attorney as  
21 the successor trustee of the '95 trust; and he was your  
22 personal attorney?

23 A As everything that relates to these matters,  
24 yes, I -- I viewed Robert as my attorney.

25 Q Did he ever disclose to you potential issues



1 of conflict that arose by virtue of the divergent roles  
2 you have as I've just described, and perhaps there are  
3 other roles?

4 MR. SIMON: Objection; privilege.

5 MR. STAMOS: Privilege for which attorney --

6 MR. SIMON: If that's not privileged, nothing  
7 is.

8 MR. STAMOS: Well, we're going to have to  
9 litigate about this, so I'm trying to figure out --

10 MR. SIMON: That's fine.

11 MR. STAMOS: -- a privilege in which  
12 attorney-client relationship? The attorney-client  
13 relationship of him to --

14 MR. SIMON: You just asked -- Jim, let me  
15 answer your question. You just asked about a  
16 conflict in many different capacities, correct?

17 MR. STAMOS: Yes.

18 MR. SIMON: So any of those capacities or all  
19 of them, it's privileged, and that's --

20 MR. STAMOS: I understand conceptually. What  
21 I'm asking you is, in which capacity are you saying  
22 there was a conversation that resulted in a  
23 privileged conversation?

24 MR. SIMON: In the capacity that he was the  
25 client and Robert was the attorney, and we won't be



1 talking about conversations between them that are  
2 privileged.

3 Q (By Mr. Stamos) Are you going to follow your  
4 lawyer's instruction not to answer any questions about  
5 conversations you had with Robert Spallina?

6 A I am.

7 Q Will that extend to conversations that are  
8 memorialized in the emails that we're going to be  
9 reviewing here?

10 MR. SIMON: I will --

11 Is that for me or him?

12 MR. STAMOS: Well, that's for him, but I guess  
13 I'm curious --

14 (Cross-talking. Interruption by the  
15 reporter.)

16 MR. SIMON: We won't assert privilege where  
17 there's a third party on the email or it's been  
18 disclosed because we didn't assert the privilege.

19 MR. STAMOS: Okay. I just want to state that  
20 my position, so to give you an opportunity to  
21 modify yours, is that, by virtue of our having been  
22 produced these emails, and we're going to go  
23 through more, which themselves give us partial  
24 information about conversations that took place and  
25 communications that took place about the topics



1 we're addressing, such as the potential use of the  
2 2000 trust, that the privilege was waived, that you  
3 can't -- that's number one.

4 And, number 2, that these documents reflect  
5 that the communications on these topics were not  
6 conducted solely between Mr. Spallina, as  
7 Mr. Bernstein's lawyer, and Mr. Bernstein, but were  
8 conducted among Mr. Spallina and Mr. Bernstein and  
9 others who did not have his capacities regarding  
10 these matters and was waived in that way as well.

11 So that's my position, and I ask you to  
12 reconsider yours. Otherwise, we'll have to have  
13 the judge address it.

14 MR. SIMON: We'll likely have to have the  
15 judge address it, but we'll consider it at a break.

16 MR. STAMOS: Okay.

17 Q (By Mr. Stamos) Did you personally make a  
18 judgment or reach a conclusion as to whether the 2000  
19 trust should be used as a beneficiary in making a  
20 submission to the insurance company for proceeds of the  
21 insurance policy?

22 A I did not.

23 Q Did you ever have a conversation with anyone  
24 other than Mr. Spallina about the potential for using  
25 the 2000 trust in making an application to the insurance



1 company?

2 A Possibly -- possibly Donald Tescher.

3 Q Did you ever have a conversation with your  
4 sister who would not have received proceeds of the  
5 policy if, in fact, the 2000 trust were employed?

6 A Not that I recall, no.

7 Q So this entire process was conducted, and at  
8 no point did you discuss with your sister the fact that  
9 if the 2000 trust were employed, in fact, she would be  
10 cut out of the proceeds of the insurance policy?

11 MR. SIMON: Objection; asked and answered.

12 You can answer.

13 Q Is that correct? That's your testimony?

14 A That's correct.

15 Q Did you have a conversation with anyone else  
16 other than maybe Spallina and maybe Tescher?

17 A About the 2000 trust document; is that the  
18 question?

19 Q Yes.

20 A No, I don't believe so.

21 Q Where Mr. Spallina writes to Pam here in the  
22 middle of Exhibit Number 1, Page 1, "As I mentioned  
23 previously, there was a discussion with the carrier  
24 about possibly using the 2000 trust, the one you are  
25 carved out of but would be split five ways according to



1 Ted, but I'm not sure that we will achieve that result."

2 Are you familiar with what he's talking about there?

3 A Yes.

4 Q What's he talking about there?

5 A It looks like he's talking about the fact that  
6 the 2000 document didn't include Pam, and he was  
7 probably -- he -- it looks like he may have been  
8 referencing, according to him, according to me, the --  
9 the -- there would be a split five ways.

10 Q What was the basis for your belief that there  
11 would be a split five ways?

12 A There were conversations going on at that  
13 point in time about how to -- what to do with, you know,  
14 this insurance policy, and splitting it five ways was  
15 what -- my understanding was how the -- what the  
16 proceeds of the policy -- of the trust were going to be.

17 Q The 2000 trust?

18 A No, not the -- I knew nothing about a 2000  
19 trust.

20 Q Do you recall receiving this email where --  
21 the last item in the string is from you, where  
22 Mr. Spallina says, "As I mentioned previously, there was  
23 a discussion with the carrier about possibly using the  
24 2000 trust, the one you are carved out of but would be  
25 split five ways according to Ted," doesn't that imply



1 that you were involved in a conversation about the 2000  
2 trust?

3 A I didn't have conversations with the carrier.  
4 Spallina had conversations with the carrier. I did not.

5 Q No, no. Doesn't this imply that you had a  
6 conversation with Mr. Spallina in which he says, "But it  
7 would be split five ways according to Ted"? I mean, how  
8 would he know what Ted thought unless Ted told him, and  
9 you're Ted?

10 A I -- I -- I can't help you there. I don't  
11 know what Spallina was thinking.

12 Q In any event, so we've established that this  
13 is a string of emails that you and Ted and Pam shared,  
14 correct? You and Spallina and Pam shared, correct?

15 A Yes.

16 Q And you would have seen them at or about the  
17 time they're dated, correct?

18 A Yes.

19 Q Let me then go to Exhibit Number 2, which is  
20 TS4489 through 92.

21 (Exhibit 2 was marked for identification.)

22 Q Again, we have to go back to front, and this  
23 is a string of emails -- am I correct, this is a string  
24 of emails in which you participated, the last one being  
25 from you to Mr. Spallina, Pam Simon, David Simon and --



1 I guess Pam Simon twice, right?

2 A Yes.

3 Q Okay. Going back to front, the first message  
4 appears to be from Pam to Spallina and to you saying,  
5 "Hi, Robert. Any word on the proceeds," asking whether  
6 he needed help, correct?

7 A Yes.

8 Q Then the next item of the string is from  
9 Spallina to Pam saying, "Heritage responded back that  
10 they need a copy of the trust instrument. We do not  
11 have a copy, and the only executed trust document that  
12 we have in which the policy is listed as an asset is the  
13 2000 trust prepared by Al Gortz." Do you see that?

14 A I do see that.

15 Q This is dated, it looks like, November 19,  
16 2012. It is your email back. "Highly unlikely they  
17 will use another trust. What is the SOP when a doc  
18 can't be found?" That's from you, right?

19 A Yes, it is.

20 Q And it's dated November 19, 2012, right?

21 A Yes.

22 Q Am I correct, as I'm reading this, at least by  
23 November 19, 2012, no one has located Exhibits 21 and 22  
24 that we talked about earlier, the unsigned drafts of the  
25 trust, correct?



1 MR. SIMON: Objection; speculation.

2 A You are right, correct.

3 Q When you then go to the next page, 4490, it  
4 says, from Pam to you, copied to Spallina, "Please send  
5 the executed trust document before you respond to  
6 Heritage." Do you remember what Pam -- what trust  
7 document she was talking about?

8 A I do not.

9 Q Is it fair to say the only executed document  
10 you had that would be relevant at that point would have  
11 been the 2000 trust document, correct?

12 MR. SIMON: Objection; speculation.

13 Q As far as you knew.

14 A Can you ask me that question again, please?

15 Q Yeah. Actually, it might help if I go above  
16 that. When you look at Spallina's note to you then, a  
17 little bit below the halfway point of page 4409, it  
18 says, from Spallina, "We are not responding to them with  
19 the document from 2000. We discussed that and you are  
20 carved out under that document. We need to find the  
21 1995 trust ASAP."

22 Do you understand that was him responding to  
23 Pam where she said, "Please send the executed trust  
24 document before you respond to Heritage"?

25 A I -- I do.



1 Q He must have been talking about the 2000  
2 trust, and he's telling her we're not going to use that  
3 trust because you're cut out, right?

4 A I can't say for sure, you know, why he's  
5 saying that, but that's, you know, what -- what it looks  
6 like from this document.

7 Q When you received this and saw it, is that  
8 what you assumed, that he's telling her we're not going  
9 to use the 2000 trust because you're cut out of it?

10 MR. SIMON: Objection; speculation.

11 MR. STAMOS: No. I'm not asking him to  
12 speculate.

13 Q I'm asking your perception when you read this.

14 MR. SIMON: No. You asked him what he  
15 assumed, is what you asked.

16 MR. STAMOS: Well, I'm not asking him to  
17 speculate about what he assumed. I'm asking him to  
18 tell me what he assumed, if he can remember.

19 A I can't remember, but according to this,  
20 that's what it looks like Spallina is saying.

21 Q Okay. That's fine.

22 Then there's another letter -- there's another  
23 note November 19th, the same date, from David Simon,  
24 "May be able to achieve Sy's intended result through  
25 waiver and settlement agreement." That was the attempt



1 that was made to get all five children to sign off, and  
2 then you wouldn't need to worry about what the trust  
3 said or didn't say, correct?

4 A I believe so, yes.

5 Q Okay, excellent. If you then look at Exhibit  
6 Number 3, it looks to me -- if you just take a quick  
7 look at this, it looks to me that this is an email from  
8 Pam, and you are among those copied --

9 A I don't have it.

10 Q We don't have 3 yet.

11 MR. STAMOS: Oh, I'm sorry. I'm sorry. Could  
12 the court reporter please give it to him.

13 (Exhibit 3 was marked for identification.)

14 Q I just have a simple question for you.  
15 Looking at this, am I correct that this is a letter --  
16 an email that Pam sent and that you were copied on which  
17 attempted to circulate a settlement agreement among you  
18 to try to get the proceeds without the need for  
19 litigation or worrying about the trusts?

20 A That is what it looks like to me, yes.

21 Q And you recall that effort was made, correct?

22 A Yes.

23 Q And it was not successful because Eliot would  
24 not agree, correct?

25 A I believe that's the reason why, yes.



1 Q If you could then --  
2 I'm sorry, continue to look at that exhibit,  
3 at 4519. It said there was -- at the bottom, that's  
4 your email, correct, that says, "There was an exhaustive  
5 search for the original trust document from 1995 which  
6 is the beneficiary of the policy owned by dad. Since  
7 we've have not been able to locate it," and then some  
8 further text. Is it fair to say that as of December 6,  
9 2012, the drafts of the trust, Numbers 21 and 22, had  
10 still not been located?

11 A That is correct.

12 Q Thank you.

13 All right. If you could then look at Exhibit  
14 4.

15 (Exhibit 4 was marked for identification.)

16 Q Now, reading bottom to top here, which I think  
17 we need to do, on Page 69, this is from you -- I'm  
18 sorry, this is from Spallina to you, correct?

19 A No.

20 On 67 or -- a different page?

21 Q I'm sorry.

22 Oh, you got 67. Okay, yeah, I'm sorry. I  
23 have two sets of them.

24 When you're looking at Page 67, that's  
25 Mr. Spallina writing to you, correct?



1 A Well, I'm copied.

2 Q You are one of those to whom this was  
3 addressed, correct?

4 A Yes.

5 Q In it, Mr. Spallina was talking about options  
6 and trying to deal -- dealing with the situation where  
7 the agreement could not be achieved, right?

8 A Yes.

9 Q Among the things he said was, and this is in  
10 the fourth line from the bottom, "As none of us can be  
11 sure exactly what the 1995 trust said (although an  
12 educated guess would point to the children in light of  
13 the document prepared by Al Gortz in 2000), it is  
14 important that we discuss further prior to spending more  
15 money to pursue this option." As of that day, and this  
16 was dated January 22, 2013, none of you could know for  
17 sure what it said, correct?

18 A That's correct.

19 Q Am I correct, as of this date, Exhibits 21 and  
20 22 had not been located, correct?

21 MR. SIMON: Objection; speculation, asked and  
22 answered.

23 A That's correct.

24 MR. STAMOS: No, it hasn't been asked.

25 Q I'm sorry, what was the answer?



1 A Correct.

2 Q Thank you.

3 MR. STAMOS: Do you want to take a break now,  
4 Adam?

5 MR. SIMON: Please.

6 MR. STAMOS: Okay.

7 (Recess taken.)

8 MR. STAMOS: So now we're on Exhibit 5.

9 (Exhibit 5 was marked for identification.)

10 Q (By Mr. Stamos) Now, I'm looking at Exhibit  
11 Number 5. Do you have page 65? Is that the page number  
12 at the bottom?

13 A Yes.

14 Q Looking at the message from Spallina, the  
15 second one here - it looks like the top is from Lisa to  
16 Spallina and Jill - where Spallina said, "I need to see  
17 Pam's life insurance trust to answer the question," do  
18 you know what question he was talking about?

19 MR. SIMON: Objection; speculation.

20 A I don't.

21 Q All right. Then I'm going to skip Number 6.

22 I'm just trying to cut this down so we can  
23 move along. I'm saving time by wasting a little bit of  
24 time.

25 I'm not going to talk to you about 7.



1           If you would then look at Exhibit Number 8,  
2 please.

3           (Exhibit 8 was marked for identification.)

4           Q     This is from Mr. Spallina to Eliot and  
5 yourself and -- to Pam, carbon copied to Eliot and  
6 yourself, Lisa, Jill and Christine, right?

7           A     Correct.

8           Q     See at the top there?

9           A     Yes, you are correct.

10          Q     Thank you. And I want to direct you to the  
11 fourth paragraph up, the one that begins, "Let's stop  
12 making." Do you see that?

13          A     I do.

14          Q     The second sentence says, "Pam saw him execute  
15 the trust with the same attorney that prepared her own  
16 trust, a copy of which I have and will offer up to fill  
17 in the boilerplate provisions." Do you see that?

18          A     Yes.

19          Q     When you received this, did you understand  
20 that to mean that Mr. Spallina understood that your  
21 father's '95 trust was basically a mirror image of Pam's  
22 and, therefore, he would use Pam's in order to fill in  
23 the blanks with regard to boilerplate language?

24               MR. SIMON: Objection; speculation, form.

25          Q     I'm asking if that's your understanding.



1 MR. SIMON: You said did he understand that he  
2 understood. It's like two understandings removed.

3 MR. STAMOS: If that's what I did, let me fix  
4 it.

5 Q When Mr. Spallina wrote that and you received  
6 this and read it, was it your understanding that  
7 Mr. Spallina had the understanding that the 1995 trust  
8 was basically a copy, so to speak, of Pam's trust and,  
9 therefore, he could use Pam's trust to fill in the  
10 missing boilerplate language that might be necessary to  
11 be filled in?

12 MR. SIMON: Same objections.

13 A You're using words like "mirror image" and  
14 I -- I don't believe that he was looking at Pam's  
15 document, according to this email, as a -- as a tool and  
16 a mirror image. I think he was using Pam's document  
17 maybe as -- more as a guide, because I think they were  
18 prepared around the same time by the same firm. So --  
19 but I can't honestly speculate what was in Spallina's  
20 mind at the time he wrote this.

21 Q Have you ever seen Pam's trust?

22 A I have not.

23 Q Then let's go to -- looking now at Exhibit  
24 Number 9.

25 (Exhibit 9 was marked for identification.)



1 Q We have number 9 in front of you. Page 51 and  
2 52, do you see that?

3 A I do.

4 Q This looks to be, going back on Page 52, an  
5 email that you drafted giving your analysis of the  
6 Heritage payout situation, and looking at that document,  
7 about seven lines down, as of that point the trust could  
8 not be located still, correct?

9 A Correct.

10 Q I take it at that time Exhibits 21 and 22 were  
11 still not located, because if they were, you would have  
12 talked about them, correct?

13 MR. SIMON: Objection; speculation.

14 A Correct.

15 Q Then on Page 51, that's your email to your  
16 siblings and Mr. Spallina in which -- in further  
17 analysis -- this is actually to Eliot - I see - with  
18 copies to your siblings responding to a prior email he  
19 had written about what he thought the situation was,  
20 correct?

21 A Yes, sir.

22 MR. STAMOS: Now, if we could go, please, to  
23 Exhibit 10.

24 (Exhibit 10 was marked for identification.)

25 Q If you're looking at the bottom of Page 47,



1 this is part of a string that ends with Eliot writing on  
2 February 9th to yourself and to Pam, copies to many  
3 other people. Do you see that?

4 A Yes, I do.

5 Q Then when you look at the bottom, the first  
6 email on that page where Pam says, on February 8, 2013,  
7 "Yeah, bad news. We don't have copies of the policy.  
8 Dad probably took it when he emptied his office.  
9 Probably the trust, too." Do you see that?

10 A Yes, I do.

11 Q Do you have any understanding as to how it  
12 came to be that a copy of the draft trust was located at  
13 a later date even though a search had already been done  
14 trying to find the trust document itself?

15 MR. SIMON: Objection; speculation.

16 A None.

17 Q When the trust documents -- strike that.

18 When the draft trust documents, Exhibits 21  
19 and 22, were located, do you recall having any  
20 conversation with anybody, Mr. Simon, your sister,  
21 anything to the effect of, "How come you didn't find  
22 these the first time you looked," or anything like that?

23 A No, nothing like that with me, no.

24 Q Did it strike you? Did you wonder? Whether  
25 you had a conversation or not, did you wonder how it was



1 that they didn't find them the first time?

2 A No.

3 Q It didn't strike you as odd?

4 MR. SIMON: Objection; asked and answered.

5 A No, it didn't. Having searched for things  
6 before in my life, you search once, you search again,  
7 sometimes you come across things, especially old. No,  
8 it didn't strike me as odd.

9 Q If you could look at Exhibit Number 11,  
10 please.

11 (Exhibit 11 was marked for identification.)

12 Q This is another string here. Beginning at the  
13 bottom, this is your brother Eliot telling you that he's  
14 seeking independent counsel, correct, on February 13,  
15 2013?

16 A Yes.

17 Q Then the next email up, on February 14th, is  
18 you to Robert Spallina saying, "Please move forward as  
19 we discussed in the last group phone call in which we  
20 decided to have Heritage pay your trust account or a  
21 trust that you would act as trustee. Heritage has  
22 stated that they will pay based on a court order showing  
23 that there's consensus among the 1995 trust  
24 beneficiaries. Let's get this done."

25 My question about that is, as of that point,



1 was it your understanding that Eliot would agree to have  
2 such a court order entered?

3 A I don't know.

4 Q This communication with Mr. Spallina includes  
5 copies to all of your siblings as well as to Christine  
6 Yates, who was Eliot's attorney, correct?

7 A I -- I believe so.

8 Q Is it your position that this was  
9 attorney-client communication, as well, between you and  
10 Mr. Spallina?

11 MR. SIMON: We didn't assert a privilege, if  
12 that's what you're asking. I didn't object.

13 MR. STAMOS: Well, our position, for the  
14 record, is that you may not selectively employ the  
15 privilege.

16 Q So my question is, was this an attorney-client  
17 communication, as far as you were concerned?

18 A In every communication I had with Robert  
19 Spallina, I would expect that that privilege was there.

20 MR. ROSE: This is Alan Rose, just for the  
21 record, since I'm Mr. Bernstein's personal counsel.  
22 He's not asserting the privilege as to  
23 communications of this nature as responded in your  
24 email. He's asserting privilege to private  
25 communications he had one-on-one with Robert



1 Spallina, who he considered to be his counsel.  
2 That's the position for the record and that's why  
3 the privilege is being asserted.

4 Continue.

5 MR. STAMOS: No, I understand that. It's just  
6 that our position is that, if one has an  
7 attorney-client relationship, in particular with  
8 regard to discussions concerning a particular  
9 topic, the privilege is waived when you do not  
10 maintain the privilege with respect to certain  
11 communications and you do with others, and that's  
12 our position. So --

13 MR. ROSE: Okay. But for the record, since  
14 you're going to argue this in Illinois potentially,  
15 in every piece of litigation, certain things that  
16 you communicate with your lawyer eventually find  
17 their way into pleadings or communication with the  
18 other side. That does not mean that private  
19 communication you have one-on-one with your lawyer  
20 about various things when you're seeking legal  
21 advice on a confidential basis are not privileged.  
22 That's the sole basis upon which the privilege is  
23 being asserted and it's going to continue to be  
24 asserted.

25 MR. STAMOS: Can we proceed?



1 MR. ROSE: Absolutely. Thanks.

2 MR. STAMOS: Got it.

3 Q (By Mr. Stamos) In any event, looking at  
4 Exhibit 11, this was a -- whatever it says, this was an  
5 email series of -- exchange between yourself and Eliot  
6 and all the addressees, correct?

7 A It appears to be, yes.

8 Q Have you ever investigated to advise yourself  
9 as to what took place within the insurance company, that  
10 is to say the insurance company records, as to your  
11 father's interactions or lack of interactions with them  
12 about beneficiary changes or ownership changes?

13 A I -- I have not; did not do that.

14 Q I take it you, therefore, have no knowledge  
15 about that, no personal knowledge about that?

16 A Can you tell me what "that" is again.

17 Q About beneficiary changes that your father  
18 either did send or did not send to the insurance  
19 company.

20 A Again, I'm going to go back to that time of  
21 reinstatement where it was my understanding that the  
22 beneficiary of this insurance policy was the trust,  
23 so -- I think you stated something that wasn't entirely  
24 accurate about that I didn't have any knowledge.

25 Q Okay. So your knowledge of it would have been



1 with regard -- I think we talked about that earlier.  
2 You told us what your role was in that -- what you knew  
3 about the reinstatement provision a couple of years  
4 before he died, correct?

5 A Yes, that's right.

6 Q All right. We don't need to go over that  
7 again. That, I understand.

8 Let's look, if we can, at Exhibit Number 14.  
9 (Exhibit 14 was marked for identification.)

10 Q Looking at that document, it looks like a  
11 string that ends with an email from Mr. Spallina to Pam  
12 and copied to yourself and David, correct?

13 A Yes, that is correct.

14 Q Now that email -- the initial email in that  
15 string is one from David Simon -- I'm guessing to  
16 Mr. Spallina, although it's not clear, where it says,  
17 "Last of the docs we could dig up." Do you see that?

18 A I do.

19 Q My assumption, although it's not clear from  
20 the email, is that there was -- oh, yeah, I'm sorry. At  
21 the bottom you can see there's a PDF attachment, a  
22 Document 9 PDF. Do you see that on Page 6579?

23 A Yes.

24 Q Do you know what document he's referring to in  
25 that email?



1 A I don't.

2 Q If you would look at Exhibit Number 15,  
3 please.

4 (Exhibit 15 was marked for identification.)

5 Q This document, 6508 through 6512, is a string  
6 of emails that ends with one from you to Robert Spallina  
7 copied to several people, correct?

8 A It appears that way so far, yes.

9 Q Take your time. Is that what that is?

10 A Yes.

11 Q The last email in that string is one that you  
12 sent, correct?

13 A Yes.

14 Q When you say, "I think one of my --" This is  
15 to Robert: "Pam, Scooter, Jill, Lisa and I will be  
16 discussing several related issues over the weekend," and  
17 this is Saturday, March 16, 2013. "I think one of my  
18 previous emails asked you to hold off doing anything  
19 concerning the life insurance policy after a specific  
20 date. Please continue to work with the insurance  
21 company on our behalf."

22 What were you talking about there?

23 A I cannot remember.

24 Q If you would please look at 6510. It's the  
25 third page of that exhibit.



1 A Okay.

2 Q Do you see the reference to March 15, 2013  
3 there from Spallina?

4 A I see March 15, 2013.

5 Q Right. 7:07 a.m., in the middle of that page?

6 A Yes, I do.

7 Q And Mr. Spallina wrote in this email string  
8 that ends with your last email, "There is a break in  
9 title and beneficiary designation prior to getting where  
10 the confirmation letters state where we are today, Sy as  
11 owner and the trust as beneficiary." Do you know what  
12 they're talking about?

13 A I believe that I do.

14 Q What did you understand Mr. Spallina was  
15 conveying by that message?

16 A That there was a previous owner or an initial  
17 owner of this policy and that I think he was learning  
18 about the -- the chain of -- of ownership of the policy  
19 from the very beginning and its iterations over time  
20 when -- after speaking with the insurance company.

21 Q Did you understand this to be that  
22 Mr. Spallina was told by the insurance company that  
23 there was a break in title and beneficiary designation?

24 A Well, I -- I'm -- only because I'm reading  
25 what he said. I don't know what he assumed that meant,



1 but I'm assuming from what I'm reading that he is saying  
2 that there was some break there.

3 Q And this was in response to your email from --  
4 it looks like --

5 Well, it looks like the times are a little bit  
6 odd there. I'm not sure why that is.

7 A Right.

8 Q I wonder if one is eastern time and one is  
9 central time?

10 A Between me and Robert?

11 Q Yeah. Could that have been possible?

12 A Anything's possible, but unlikely, I think.

13 Q Well, in any event, when you received that,  
14 did you understand what he was talking about?

15 A At the time, I probably did not.

16 Q Now, looking at Exhibit 16, please.

17 (Exhibit 16 was marked for identification.)

18 Q Do you know who Mr. Welling is, before I ask  
19 you any questions about the document?

20 A I believe that he was someone connected to the  
21 insurance company.

22 Q I'd like you, if you will, to take a moment  
23 and read Exhibit Number 12 -- I'm sorry, Exhibit  
24 Number 16, back to front, and then I want to ask you  
25 some questions about it. It's not all that long.



1           A     So you'd like me to read all the pages in the  
2 email?

3           Q     Yeah.

4           A     Okay.

5           Q     Just take a moment to read it. The messages  
6 are actually pretty brief.

7           MR. ROSE: While he's looking at that, I'd  
8 just state for the record that TS5253, at the  
9 bottom, clearly supports the assertion of the  
10 privilege.

11          MR. STAMOS: In as much as it includes Scott  
12 Welling on it, I'd have a hard time understanding  
13 how that supports the existence of a privilege,  
14 but --

15          MR. ROSE: Okay.

16          Q     (By Mr. Stamos) Have you had a chance to read  
17 that yet, Mr. Bernstein?

18          A     Yes. I'm -- yes, I have.

19          Q     I bet you recall this email string, correct?

20          A     Yes.

21          Q     It ends with a message from Mr. Spallina to  
22 you which would have included all the rest of it,  
23 correct?

24          A     Yes.

25          Q     What's this about? What's the genesis of this



1 dispute that results in Mr. Spallina saying, "Ted, I'm  
2 done with this matter"? What did you understand was  
3 going to happen?

4 A The change in who was going to be handling the  
5 life insurance policy at -- at around this time.

6 Q It was changed from whom to whom?

7 A From the Tescher & Spallina firm to Adam  
8 Simon.

9 Q Were there any discussions with the insurance  
10 company about that prior to the lawsuit being filed in  
11 Chi cago?

12 MR. SIMON: Objection; speculation.

13 A I've -- I simply don't know.

14 Q You don't?

15 A I do not.

16 Q Now, when you then look at --

17 I'm sorry, we'll go to the next exhibit, which  
18 is -- it looks like Exhibit 17.

19 (Exhibit 17 was marked for identification.)

20 Q Now, looking at Exhibit Number 17, where  
21 Mr. Tescher writes, "I feel that we have serious  
22 conflicts in continuing to represent you as trustee to  
23 the life insurance trust and need to withdraw from  
24 further representation," do you see that?

25 A I do.



1 Q Now, first, this document is an email string  
2 that ends with Mr. Tescher sending an email to  
3 Mr. Welling, Mr. Spallina and also to yourself, as well  
4 as the Simons, correct?

5 A Yes.

6 Q You recall receiving this, do you?

7 A Now that I see it, I recall.

8 Q Now, where Mr. Tescher says that, "There's a  
9 serious conflict continuing to represent you as trustee  
10 of the life insurance trust," is he referring to the  
11 1995 trust?

12 MR. SIMON: Objection; speculation.

13 A I believe that that's what he's referring to  
14 here.

15 Q I take it that he withdraw from representing  
16 you in that capacity as of this email?

17 A I -- I believe that to be the case.

18 Q Did they continue to represent you in any  
19 other capacity after that date?

20 A Yes.

21 Q In what capacities did they continue to  
22 represent you?

23 A As the -- counsel for the Shirley Bernstein  
24 Trust.

25 Q Do they continue to be your attorney in that



1 capacity?

2 A Currently?

3 Q Yes.

4 A They are not.

5 Q When did they cease being your attorney in  
6 that capacity?

7 A Early 2014 is my recollection.

8 Q What led to that?

9 A What led to that was --

10 MR. ROSE: Well, let me -- to the extent he's  
11 discussing communications he had with his former  
12 counsel, they would be privileged, and I would  
13 instruct him not to answer based upon any  
14 communications with his counsel.

15 MR. STAMOS: Okay.

16 Q I don't agree with that, but I assume you're  
17 going to follow your attorney's instruction not to  
18 answer that?

19 A Yes.

20 Q All right. We don't need to say anymore, but  
21 we'll certify that.

22 Leaving aside conversations then with  
23 Mr. Spallina or Mr. Tescher, what led to their ceasing  
24 to be your attorneys?

25 A My recollection is that they withdrew.



1 Q Okay.

2 A Again, we're going back quite a while, but I  
3 believe what led to them not being my attorneys is that  
4 they withdrew.

5 MR. ROSE: And just for the record, there are  
6 aspects of that that are not privileged, but you  
7 asked him about his -- I just advised him not to  
8 disclose his private, confidential communication  
9 with them while they were still his lawyers. That  
10 does not foreclose your questioning.

11 MR. STAMOS: No, what I asked him was what  
12 other circumstances led to that other than --  
13 without reference to such conversations, and he  
14 said they withdrew.

15 Q Do you know why they withdrew?

16 A I -- I do know why they withdrew. There were  
17 some questions within their firm about documents and  
18 irregular -- irregularity around documents, and they  
19 withdrew because I felt it was best for them to  
20 withdraw.

21 Q What documents were there -- with regard to  
22 what documents were there irregularities, as far as you  
23 knew?

24 A There was an amendment to a trust document.

25 Q Which trust?



1 A Shirley Bernstein Trust.

2 Q And finally Exhibit Number 18.

3 (Exhibit 18 was marked for identification.)

4 Q Are you ready?

5 A Yes.

6 Q Let me just back up a second. The document  
7 that you were talking about that there was a problem  
8 with was a document which it appeared that the Tescher &  
9 Spallina firm had participated in backdating a signature  
10 by your father, correct? Is that your understanding of  
11 it?

12 A Something along those lines. I'm not quite  
13 sure that it's backdating or creation of a document.  
14 I'm not sure that backdating would be the right way to  
15 describe that.

16 Q It included a notarization that was not  
17 authentic, correct?

18 A There were -- there were two issues that arose  
19 out of that law firm that were highly irregular as far  
20 as I'm concerned.

21 Q What were those?

22 A One was a -- was the signing of a notarized  
23 document by a notary that was not proper, and the second  
24 was the creation or fabrication of a document by  
25 Mr. Spallina that -- that related to Shirley's trust



1 document. It was, I believe, in the amended trust  
2 document, but I'm going now by complete recollection  
3 of --

4 Q Do you recall what the purpose of that  
5 document was, the second document you're talking about?

6 A The purpose was to make changes to the  
7 original trust document.

8 Q Any particular change that you can recall?

9 A No, not -- not, you know, sitting here without  
10 the document, no.

11 Q The last document that I've shown you, this  
12 Exhibit Number 18, this is Mr. Tescher -- it looks like  
13 he's writing to you and your siblings in particular  
14 about billing, correct?

15 A Yes.

16 Q This is August 30, 2013, correct?

17 A Yes, it is.

18 Q As of this date, he's still referring to the  
19 fact that your father's - looking at the second full  
20 paragraph from the bottom - that your father's affairs  
21 were not left in the best order and so forth, and also  
22 some concern that Eliot's activity might be costing the  
23 estate money, correct?

24 A That's what he says here, yes.

25 Q As of this time that this was written, you



1 still were not aware of the existence of Exhibits 21 and  
2 22, the draft unsigned '95 trust, correct?

3 A I'm not sure.

4 Q Here's what I want to ask you: You're aware  
5 that the 2000 trust is an insurance trust, correct?  
6 It's for the purpose of receiving insurance proceeds,  
7 correct?

8 MR. SIMON: Objection. Are you going to show  
9 him the document?

10 MR. STAMOS: Yeah, I can. I was going to work  
11 from memory, but we can.

12 That's Exhibit Number 23.

13 (Exhibit 23 was marked for identification.)

14 Q So, first, let me ask you this: I imagine  
15 that your business, over the years that you've been  
16 involved in selling life insurance, you've dealt with  
17 many customers or clients who have had insurance trusts,  
18 correct?

19 A That is correct.

20 Q This is not the first time you've ever looked  
21 at an insurance trust, the one you've just looked at,  
22 correct?

23 A Also correct, yeah.

24 Q In your experience, the lawyers who draft  
25 trusts, for example this one, very often do what was



1 done here, which is they provide a first page indicating  
2 who prepared it with the law firm's name on it, right?

3 MR. SIMON: Objection; speculation.

4 Q Is that your experience to see that?

5 A Yes.

6 Q If you look at Exhibit Number 24 and 25 --

7 Let's start with Number 24.

8 (Exhibits 24 and 25 were marked for  
9 identification.)

10 Q Looking at 24, that's the trust dated July 25,  
11 2012, correct?

12 A Yes, it is.

13 Q And number 25 is a trust dated May 20, 2008,  
14 correct?

15 A Yes.

16 Q And those are both prepared by the Tescher &  
17 Spallina firm, right?

18 A Yes.

19 Q The three trusts that we have, at least that  
20 we know are executed, each one of them identifies the  
21 law firms who prepared them, correct?

22 A Yes.

23 Q In your experience as a life insurance  
24 professional, I'm sure you've had occasion over time to  
25 be the first one advised that one of the insureds has



1 died and then you participated in helping to make a  
2 claim, correct?

3 A Yes.

4 Q In doing that, I'm sure you've interacted with  
5 attorneys, including those who have drafted trusts as  
6 part of that process, right?

7 A Yes.

8 Q Is it your experience, what I believe to be  
9 universal among estates and trusts lawyers, that they  
10 maintain trusts that they have drafted or estate plans  
11 they have created because they're aware that down the  
12 line when someone dies, number one, they might need to  
13 find those documents, and number 2, the lawyers hope to  
14 get the business as part of the estate? Is that true in  
15 your experience?

16 MR. SIMON: Objection; speculation, form.

17 MR. STAMOS: I'm asking for his experience.

18 MR. SIMON: He's not an attorney.

19 A That, I don't know. I mean, what their intent  
20 is for drafting the documents and -- I can't say in  
21 general terms --

22 Q Okay. But in your experience, have you ever  
23 gone to a firm that drafted a trust and they didn't have  
24 a copy of it?

25 A I don't know.



1 Q Here, do you know if efforts were made to  
2 contact the attorneys who are purported to have drafted  
3 the 1995 trust to see if they had a copy of it?

4 A I believe that efforts were made to do that,  
5 yes.

6 Q Did you learn what the results of that  
7 investigation were?

8 A My recollection was the firm was absorbed by  
9 another firm, or maybe there were two, you know,  
10 iterations of this, but the firm is no longer in  
11 existence and that they didn't keep the records or they  
12 may have sent out something about records.

13 I'm just going by memory, so I can't be -- you  
14 know, give you anything more than that.

15 Q Do you remember who told you that?

16 A I do believe that was Robert Spallina. I  
17 think he was making those inquiries to the other firm.

18 It may have been David in Chicago.

19 Q Now, David has testified that -- I'm speaking  
20 roughly, but I believe accurately in describing his  
21 testimony, which is that he -- that when Simon created  
22 the '95 trust, that David assisted him in preparing it  
23 on the computer actually and Simon then took that  
24 version and took it over to Hopkins & Sutter, the law  
25 firm that they say prepared it, and that was the basis



1 for the trust ultimately that Simon executed. Does that  
2 sound familiar to you?

3 A It doesn't. It does not sound familiar that  
4 Scooter was -- that David was creating a document on  
5 a -- on a -- on a computer.

6 Q We now know that David testifies that there  
7 was a document on the computer, correct, because that's  
8 what Exhibit Number 21 is, right?

9 A Okay.

10 Q Okay? I mean, do you agree with me, that's  
11 what we understand that to be?

12 A I do.

13 Q So the question I have for you is, did you  
14 ever have a conversation with David in which he said --  
15 when these communications were taking place with  
16 Mr. Spallina about how do we approach, we can't find the  
17 '95 trust and so forth, did David ever say anything to  
18 you like, "You know, I put it on my computer to begin  
19 with. Maybe I should check there"? Do you ever  
20 remember any such conversation?

21 A I do not.

22 Q When you look at Exhibit Number 23, if you  
23 would look at that, please, the first page indicates  
24 that the 2000 trust is to receive the proceeds --  
25 looking at the very first paragraph, the first sentence



1 actually, was to receive the proceeds of some insurance  
2 policies listed on Exhibit A, correct?

3 A Okay. I'm with you now. You want me looking  
4 at 23?

5 Q Yup. And look at the first page of it, which  
6 is 3893, the first text page.

7 A Okay. I'm with you.

8 Q This trust provides that the insurance  
9 policies set forth in Schedule A, the proceeds of those  
10 policies are going to be paid to the trust, right?

11 MR. SIMON: Objection; the document speaks for  
12 itself.

13 MR. STAMOS: I'm asking if that's his  
14 understanding of it.

15 MR. SIMON: Same objection.

16 A I mean, the document says what it says.  
17 Right?

18 Q It says that it transfers to the trustees of  
19 this 2008 trust the life insurance policies set forth in  
20 Schedule A, right?

21 MR. ROSE: Wait. Which one are you looking  
22 at?

23 MR. SIMON: Objection as to form of question.  
24 That's not what it says.

25 MR. ROSE: Which document are you looking at?



1 Don't tell me the number.

2 MR. STAMOS: I'm looking --

3 MR. ROSE: What does it say on the front?

4 MR. STAMOS: Let's start again.

5 MR. ELI OT BERNSTEIN: Proskauer Rose trust.

6 MR. STAMOS: I'm looking at Exhibit 23. The  
7 very first page indicates it was prepared by the  
8 Proskauer firm. Do we all have that document in  
9 front of us?

10 MR. SIMON: Yes.

11 THE WITNESS: Yes.

12 Q (By Mr. Stamos) All right. If you flip that  
13 first page and go to TS3893, paragraph number 1, do we  
14 agree that it says, "As and for a gift, the settlor  
15 hereby assigns and transfers to the trustees and their  
16 successors (together "the trustees"), the life insurance  
17 policies set forth in Schedule A."

18 MR. SIMON: Continue.

19 Q Do you see that?

20 MR. SIMON: Continue.

21 Q Well, it says other things as well, but -- you  
22 can read as much as you -- read as much of it as you  
23 want and then tell me whether you've read it.

24 MR. SIMON: Into the record. Read the whole  
25 thing into the record.



1 Q Okay? You see that, correct?

2 A I see it.

3 Q All right. And then Schedule A includes in it  
4 the life insurance policy with regard to which we are  
5 currently litigating, right?

6 MR. SIMON: I'm going to object as to form,  
7 because again you've misstated what paragraph 1  
8 said.

9 A Yeah. I'm going to read it. "The life  
10 insurance policies set forth in Schedule A annexed  
11 hereto, and the settlor agrees to execute all such  
12 assignments and changes of beneficiary and to do such  
13 other acts and things as may be necessary in order to  
14 make the trustees irrevocable absolute assignees of said  
15 life insurance policies. The trustee shall hold said  
16 policies together with any other property which may be  
17 received by them in trust upon the terms and conditions  
18 set forth herein. This trust shall be known as the  
19 Simon Bernstein 2000 Insurance Trust."

20 And I don't believe this policy ever  
21 received -- this trust ever received the policy, but  
22 okay.

23 Q I just want to establish first what it says,  
24 see if we could agree what it says. I agree that's what  
25 it -- you accurately read it. I agree with you.



1 A Okay.

2 Q Listed on Schedule A then, as being subject to  
3 the words that you just read, is included the insurance  
4 policy that we're litigating about, correct?

5 A Let me go to sub 2A.

6 Q Okay.

7 THE WITNESS: Do you have Schedule A?

8 MR. SIMON: It's the last page, I think.

9 Q It's the last page of that exhibit.

10 A Got it.

11 Q All right?

12 A I missed it at the top.

13 Q That's okay. And that includes the life  
14 insurance policy that we are litigating about in this  
15 case, correct?

16 A That is correct.

17 Q Do you agree with me that this trust document  
18 does not reference the existence of a prior trust that  
19 had any interest in that insurance policy or any prior  
20 trust at all, right?

21 MR. SIMON: I'm going to have to ask him to  
22 read the entire document.

23 THE WITNESS: Yeah, I can't answer --

24 MR. SIMON: Go ahead.

25 A I can't answer that question without reading



1 the whole document.

2 MR. SIMON: Go ahead.

3 Q Well, it speaks for itself.

4 Let me ask you this: Are you aware of whether  
5 it does without reading it? Are you aware of whether it  
6 references any 1995 trust or any other trust?

7 MR. SIMON: Objection; speculation. Not  
8 allowing him to read it.

9 MR. STAMOS: No, no. I'm just asking if he's  
10 aware of it without reading it. It says what it  
11 says. His reading is not going to change what it  
12 says. I'm asking his state of mind.

13 Q Are you aware of whether or not that document  
14 references the 1995 trust without having read it?

15 MR. SIMON: Objection; relevance.  
16 Go ahead.

17 Q Do you know?

18 A I'm not -- I'm not aware.

19 Q Do you think that if this document did  
20 reference the 1995 trust, that Mr. Spallina would have  
21 commented on that?

22 MR. SIMON: Objection; speculation.

23 Q Would you have expected him to tell you that  
24 it did?

25 A Can you ask me that question again?



1 Q Yeah. If this document said, for example,  
2 "I'm replacing the '95 trust with this 2000 trust,"  
3 would you have expected that Mr. Spallina would have  
4 given you advice with regard to that fact, if it were a  
5 fact?

6 MR. ROSE: I'm going to object, instruct him  
7 not to answer based on communications he had with  
8 Mr. Spallina, but you can ask the question with  
9 regard to information that Spallina disseminated to  
10 third parties or --

11 Q Well, other than conversations that just  
12 involved you and Mr. Spallina, but not excluding  
13 communications that involved your siblings, like so many  
14 of these emails did, would you have expected in such  
15 communications when you and he were talking about  
16 whether we're going to use the 2000 trust and so forth,  
17 if the 2000 trust had referenced the existence of a  
18 prior trust, do you not think he would have brought that  
19 to your attention so that you could decide what impact  
20 that had on your view that the '95 trust still applied?

21 MR. SIMON: Objection; form.

22 A Honestly, I'm not sure. I can't, you know,  
23 tell you or speculate as to what Spallina -- what the  
24 expectations were of what was in this document.

25 Honestly, I -- I can't.



1 MR. STAMOS: If you can give me just one  
2 second, I want to confer with Mr. Horan for a  
3 second.

4 (Recess taken.)

5 Q (By Mr. Stamos) If you would look at Exhibit  
6 24, please.

7 A Okay.

8 Q Is it your understanding that this document,  
9 the Simon L. Bernstein Trust -- I'm sorry, let me start  
10 again.

11 This document is dated July 25, 2012, correct?

12 A Yes. It's hard to read, but yes.

13 Q You understand this document treats all of  
14 Simon's children as predeceasing for the purpose of its  
15 distribution, correct?

16 A I have not read this document, but -- so I  
17 can't -- you know, I can't tell you that I agree with  
18 you.

19 Q Are you aware, being one of those children, as  
20 to whether you are a beneficiary or are entitled to any  
21 distribution from the 2012 trust?

22 MR. SIMON: Objection; the document speaks for  
23 itself.

24 A Do you want me to read the whole document? If  
25 that's what it says, then that's what it says. If not,



1 then --

2 Q No, I don't -- that's not what I'm asking you.  
3 There's a reasonable amount of money involved here, and  
4 what I'm asking you is, as one of Simon's children, are  
5 you aware, personally aware -- not did you read this  
6 just now and what is it saying, but are you aware of  
7 whether you are a beneficiary of a trust that he left  
8 when he died?

9 A I am -- I am aware of the trust when he died  
10 and I'm aware that I'm not a beneficiary.

11 Q Okay. That's what 2012 talks about, correct?

12 A Correct.

13 Q Not only are you not a beneficiary, none of  
14 your siblings are beneficiaries, correct?

15 A You are correct.

16 Q Was there a dispute in the family when you all  
17 learned that your father was going to, in effect,  
18 disinherit his singling? I'm sorry, the siblings?

19 MR. ROSE: What time was that? Did you --

20 MR. STAMOS: Let me start again.

21 Q Prior to his death, you became aware that it  
22 was his plan that he was not going to leave money to his  
23 children, correct?

24 A I did -- I'm aware of that.

25 Q And that lead to some discord in the family,



1 correct?

2 A It did.

3 Q Was there a call in which he participated, as  
4 did the siblings, in which you attempted to get him to  
5 change his mind or explain why his plan was not  
6 appropriate?

7 A No.

8 Q There was no such call?

9 A There was no such call based on what you just  
10 said that call was about.

11 Q Was there a call prior to his death that  
12 involved inheritance, that involved the siblings and  
13 your father?

14 A Yes.

15 Q Who said what to whom in that conference?

16 A Robert Spallina explained that my father was  
17 going to leave the -- his assets to ten grandchildren  
18 equally.

19 Q When -- I ask you to -- if you could pick up  
20 Exhibit Number 26, please.

21 (Exhibit 26 was marked for identification.)

22 Q Exhibit Number 26 was one of the documents  
23 produced by the Tescher & Spallina firm. Have you seen  
24 it before?

25 A Yes.



1 Q The third page is a transcription so that we  
2 could read what it actually said. Do you see that?

3 A Do I see what the third page is?

4 Q Yeah.

5 A Yes, I do.

6 Q What was the genesis of the facts surrounding  
7 Pam writing this note?

8 MR. SIMON: Objection; speculation.

9 Q I'm asking what you know, not what you're  
10 speculating about.

11 A Can you ask me the -- what -- the question  
12 again, or what you're specifically asking me?

13 Q What do you understand to have been the  
14 circumstances of the facts that led to Pam writing this  
15 note to your father? Why did she write it, as far as  
16 you know?

17 MR. SIMON: Objection.

18 A As far as I know, she read it -- she wrote it  
19 because she was -- she was passionate about the fact  
20 that the document -- that the estate plan did not  
21 include some of Sy's beneficiaries.

22 Q Meaning several of the siblings, right?

23 A Some of his children. Some of my siblings.

24 Q Did it exclude you as well?

25 A It did.



1 Q Did you encourage her to write that, or did  
2 you know she was going to write that note when she wrote  
3 it?

4 A I did not.

5 Q Did you take any view on the subject matter?

6 MR. SIMON: Objection.

7 Q The subject of the disinheritance.

8 MR. SIMON: Objection; relevance.

9 Q You may answer.

10 A Did I take any view to who?

11 Q Did you have a view internally as to the  
12 appropriateness of your father's plan to disinherit some  
13 of his children?

14 A Appropriateness, no. I encouraged --

15 Q You didn't have any --

16 A -- my father --

17 Q Oh, go ahead, I'm sorry.

18 A I encouraged my father to go speak with his  
19 counsel about the fact that he received this and what he  
20 should contemplate doing in receipt of it and how he was  
21 feeling about it, and I encouraged him to talk to  
22 counsel about it.

23 Q Ultimately, he left the estate plan in place  
24 so that upon his death none of his estate passed to the  
25 siblings, correct?



1 MR. ROSE: Object to the form.

2 Oh, that's your objection.

3 A He left the -- he left it in place.

4 Q Meaning that each of you and your siblings was  
5 deemed to have been predeceased for the purpose of his  
6 estate planning?

7 MR. SIMON: Objection; form.

8 Q Is that your understanding? If it's not, tell  
9 me. I mean, I don't -- I'm not going to --

10 MR. SIMON: Well, the first time you said  
11 "estate" and the second time you said "estate  
12 planning", which is much more general.

13 MR. STAMOS: I didn't mean a distinction.

14 Q I just want to establish, upon his death, no  
15 money as a consequence of his death passed or will have  
16 passed to you and your siblings if the '95 trust is  
17 never enforced and receives money through the insurance  
18 policy, right?

19 A Correct.

20 Q But the money will otherwise pass to all of  
21 your children, correct?

22 A To all of his grandchildren.

23 Q All of Simon's grandchildren, including your  
24 children as well, correct?

25 A Correct.



1 MR. STAMOS: Give me just one second.

2 THE WITNESS: Sure.

3 Q This is my final question, or just about:  
4 When you learned that Mr. Spallina had filed a claim  
5 identifying himself as trustee of the '95 trust, did you  
6 ever report to anyone in the insurance company or any  
7 authority that he, in fact, was never the trustee of the  
8 '95 trust?

9 A I did not.

10 Q Did you ever instruct him to take steps to  
11 correct any misimpression he might have caused others to  
12 form as a result of him having made that claim?

13 A I'm not sure he caused misimpressions in  
14 anybody, so I don't know, and I didn't have any  
15 conversations with insurance companies.

16 MR. STAMOS: All right. That's all I have.  
17 Thank you.

18 THE WITNESS: You're welcome.

19 MR. ELIOT BERNSTEIN: Okay. I have a few  
20 questions.

21 CROSS-EXAMINATION

22 BY MR. ELIOT BERNSTEIN:

23 Q Ted, are you aware of a holographic will  
24 leaving some of the insurance proceeds to Maritza  
25 Puccio?



1 A I don't know what a holographic will is.

2 Q It's a document that was written to leave  
3 Maritza a portion of the death benefit that Rachel  
4 Walker --

5 Did she give you documents at the hospital the  
6 night he died?

7 MR. SIMON: Objection; form. What's the  
8 question? Did she give you documents?

9 Q Did Rachel -- do you know Rachel Walker?

10 A I do.

11 Q On the night your father died, did she bring  
12 documents to you at the hospital?

13 A I believe she did.

14 Q Was one of those documents a document with a  
15 check and a letter regarding Maritza Puccio?

16 A No.

17 Q What documents did she bring you?

18 A My recollection is she brought me something --  
19 things pertaining to living wills. I'm not using  
20 correct legal terms I'm sure, but DNRs and things like  
21 that.

22 Q On the day your dad died, did you contact the  
23 sheriff?

24 A No.

25 Q On the day after he died, did you contact the



1 sheriff?

2 A I don't recall.

3 Q Did you file a sheriff's report at all after  
4 your father died?

5 A I don't recall.

6 Q Did you make any claims that Maritza Puccio,  
7 his girlfriend, might have poisoned him?

8 A No.

9 Q You gave no statement to the sheriff?

10 MR. SIMON: Objection; asked and answered.  
11 Don't answer.

12 Q Did you file a coroner's -- did you order a  
13 coroner inquiry on the day your father died?

14 A I did not.

15 Q At any time?

16 A I did not.

17 Q Do you know anybody who did?

18 A I believe the Palm Beach County did.

19 Q Palm Beach County who?

20 A The County.

21 Q The County ordered a coroner's --

22 MR. SIMON: Asked and answered.

23 Q -- investigation?

24 MR. SIMON: Asked and answered.

25 Q Okay. Why did they order it?



1 MR. SIMON: Objection; speculation.

2 Q Have you seen the report?

3 A I believe so.

4 Q On the day after your -- on the morning after  
5 your father died -- or actually that morning, did you go  
6 to your father's house?

7 A What date are you asking me about?

8 Q September 13th.

9 A You know, it's a blurry time. I -- shortly  
10 after dad died, I -- I went to his house.

11 Q Were there sheriffs there?

12 A I believe some -- somebody from a law  
13 enforcement agency showed up one of those days shortly  
14 after dad died.

15 Q Did you speak with those sheriffs?

16 A I did.

17 Q What did you talk to them about?

18 A Not a lot of recollection, but they were  
19 asking me questions about things.

20 Q Like?

21 A Medication, what -- what amounts of  
22 medication, if I knew what kind of medication he took or  
23 was taking or things like that.

24 Q Why were they there?

25 MR. SIMON: Objection; speculation.



1 Q Well, you met with the sheriff. Didn't you  
2 wonder why he was at your father's house on the day he  
3 died and you were giving statements to him?

4 MR. SIMON: Same objection.

5 A You -- did you ask me why were they there?

6 Q Yeah.

7 A I don't know. I can't remember why they were  
8 there.

9 Q And you had no involvement in the call. Did  
10 your attorney have any involvement in the call to the  
11 sheriff that you're aware of?

12 A I don't -- I can't -- I don't think so. I  
13 don't think so.

14 Q So you, to the best of your recollection, you  
15 don't know who called the sheriff or contacted them?

16 MR. SIMON: Objection; form.

17 Q Are you aware the night your father died that  
18 a call had been made to the hospital claiming that he  
19 had been poisoned?

20 A I'm not -- I'm not aware of a call that was  
21 made where -- where it was claimed that he was poisoned.

22 Q You weren't aware of that?

23 A (Nonverbal response.)

24 Q Okay.

25 MR. ROSE: Can you hear this okay in Chicago?



1 I can't tell if you're acting like you're not able  
2 to hear.

3 MR. STAMOS: No, we can hear. We got it.

4 MR. ROSE: Okay.

5 MR. STAMOS: Thank you.

6 MR. ROSE: You're welcome. I just saw your  
7 face, so...

8 MR. STAMOS: Thanks.

9 Q (By Mr. Eliot Bernstein) So you became aware  
10 at some point that there was a coroner's inquiry and you  
11 were aware that there was claims about his medication,  
12 correct?

13 MR. SIMON: Objection; form.

14 Q That if he had been --

15 MR. ELIOT BERNSTEIN: Oh, okay. I'll skip  
16 that for a second.

17 Q If this 1995 trust is lost and is not valid by  
18 the court, you get no benefits whatsoever, correct?

19 MR. SIMON: Objection; speculation, and calls  
20 for a legal conclusion.

21 Q Can you look at the trust document, either one  
22 of those trust documents that were exhibited, and tell  
23 me who the law firm is on that trust document.

24 A Tescher & Spallina's law firm?

25 Q No, the two 1995 trusts that you're claiming



1 you're the trustee of. Who's the law firm that prepared  
2 that document?

3 MR. STAMOS: Those are Exhibit 21 and 22.

4 THE WITNESS: Oh, thank you, Jim.

5 21 and 22? Of course I kept everything in  
6 order except 21 and 22.

7 Do you have it? He's looking for the law  
8 firm's name? Is this 21 and 22?

9 MR. SIMON: Yeah, these are 21 and 22. You  
10 can just look at it.

11 A Are you asking me for the law firm on 21 and  
12 22?

13 Q Yes.

14 A I don't see a law firm.

15 Q You don't see a law firm on the trust  
16 document?

17 A I don't.

18 Q Anywhere on the document, does it say who  
19 prepared it?

20 MR. SIMON: Objection; asked and answered.

21 MR. ELIOT BERNSTEIN: Well, I'm asking him  
22 is -- anywhere on the document, is there a  
23 reference to a law firm.

24 MR. SIMON: Asked and answered.

25 A Not -- not that I see.



1 Q Are you aware of any claim that your father  
2 had been poisoned by anybody? Have you ever heard that  
3 claim in the course of these proceedings?

4 A I -- I have heard things about dad being  
5 poisoned.

6 Q Did you report those things to the insurance  
7 company?

8 MR. SIMON: Objection; relevance.

9 MR. ELIOT BERNSTEIN: Well, there's a death  
10 benefit claim, and I think it would be pretty  
11 relevant, if somebody was murdered, who the  
12 beneficiaries would be and how it would be paid and  
13 if the insurance company should seek an  
14 investigation.

15 MR. SIMON: You can ask the question.

16 MR. ELIOT BERNSTEIN: So --

17 Q Go right ahead.

18 A Can you ask me the question again?

19 Q Did you report to the insurance company that  
20 you had information that your father might have been  
21 poisoned?

22 A I did not.

23 Q Did you report it to the federal court that  
24 your father might have been poisoned?

25 A I have -- I have not.



1 Q When you filed the lawsuit, did you notify  
2 anybody that your father might have been poisoned?

3 A Which lawsuit?

4 Q The 1995 trust.

5 A I did not.

6 Q When you became trustee -- Robert Spallina  
7 filed that original claim. When you became trustee, who  
8 did you notify? Did you send out anything to the  
9 beneficiaries?

10 A When I became the trustee of --

11 Q The successor trustee of this lost trust that  
12 doesn't exist legally.

13 A Did I send anything to anybody?

14 Q Yeah.

15 MR. SIMON: Objection as to form.

16 Q Did you contact the beneficiaries by sending  
17 them proper notice that you were trustee?

18 MR. SIMON: Objection as to form.

19 A I think all the beneficiaries were in  
20 discussions, but I didn't.

21 Q Are you familiar with the laws regarding  
22 successor trustees?

23 MR. SIMON: Objection; vague, asking for legal  
24 conclusions.

25 MR. ELIOT BERNSTEIN: Okay.



1 Q Is Adam Simon related to you?

2 MR. SIMON: It's an easy question. No.

3 A I don't think so, no.

4 Q Is he related to your sister's husband?

5 A He is.

6 Q He is. And does your sister stand to lose all  
7 of her benefit if this trust can't be proven and the  
8 money gets paid to the estate?

9 MR. SIMON: Objection; speculation, calls for  
10 a legal conclusion.

11 A No -- no idea.

12 Q So you know that if the trust doesn't succeed  
13 and the money's paid to the estate, you, because you're  
14 considered predeceased, don't get benefit, but you're  
15 not sure about your sister who's also considered  
16 predeceased?

17 MR. SIMON: Objection as to form; makes a  
18 legal conclusion that's not necessarily correct.

19 I wouldn't even answer that one.

20 Continue.

21 MR. ELIOT BERNSTEIN: Okay. So we'll certify  
22 that to take up with the judge.

23 MR. SIMON: Please.

24 MR. ELIOT BERNSTEIN: Okay.

25 Q Do you think that notifying an insurance



1 company of a potential claim that the insured was  
2 murdered is appropriate in your experience as an  
3 insurance agent?

4 MR. SIMON: Objection; speculation, form.  
5 You can try to answer.

6 A I think you're asking me, if I knew that  
7 somebody was murdered -- would I notify an insurance  
8 company if I knew that somebody was murdered.

9 Q If you thought somebody was murdered.

10 A Would I notify an insurance company if I had  
11 reason to be involved in that situation, I think what  
12 you're asking me is, if I had that knowledge, I would  
13 notify an insurance company.

14 Q When you filed this lawsuit, you filed a  
15 breach of contract lawsuit, correct?

16 A I'm not sure.

17 Q Well, you're the plaintiff. You filed the  
18 lawsuit --

19 MR. SIMON: Show him the Complaint. That's  
20 what it's for.

21 Q So you're not sure --

22 MR. SIMON: Show him the Complaint, Mr.  
23 Bernstein.

24 MR. ELIOT BERNSTEIN: That's a good enough  
25 answer.



1 Q What type of lawsuit did you file with the  
2 federal court?

3 MR. SIMON: Objection. Show him the  
4 Complaint, please.

5 Q I'm just asking based on your knowledge.

6 A And I'm -- and I'm not a lawyer, and I don't  
7 have the document, and the type of lawsuit that was  
8 filed, without looking at something, I can't tell you.

9 Q So you're the trustee of this trust and you  
10 filed as a plaintiff a lawsuit and you don't know what  
11 kind of lawsuit?

12 MR. SIMON: Objection; speculation,  
13 argumentative. We've asked you several times to  
14 give him the Complaint which would give you the  
15 answer you're looking for, Mr. Bernstein, so please  
16 continue.

17 MR. ELIOT BERNSTEIN: I'm just asking for his  
18 knowledge.

19 MR. SIMON: I'm just asking you to continue.  
20 We'll just stop. We can just stop.

21 MR. ELIOT BERNSTEIN: I'm just asking for his  
22 knowledge.

23 MR. SIMON: Then go ahead.

24 Q So, based on your knowledge, you are claiming  
25 that you have no idea how you filed this lawsuit?



1 MR. SIMON: Objection. That's not what  
2 he's -- you're testifying for him. Ask him a  
3 question.

4 Q Did you deliver the documents that you got  
5 from Rachel Walker at the hospital to any party?

6 A Other than the hospital?

7 Q Yeah.

8 A Deliver them? I don't recall, Eliot.

9 Q Where are those documents?

10 A I don't recall that either.

11 Q Well, Rachel Walker, you sent her to get  
12 documents from the home of Simon after he died, correct?

13 A I believe I did.

14 Q And they were estate documents, correct?

15 A I think I understand what you're asking me,  
16 and, yes, they were -- they were documents that were  
17 part of his estate planning.

18 Q And I'm asking you if you know where they are.

19 A I think I answered. I don't recall right now  
20 where they are.

21 Q Were you in custody of Simon's personal  
22 property and possessions after he died?

23 MR. SIMON: Objection; relevance.

24 A Was I in custody? Can you clarify "custody"  
25 for me?



1 Q Well, were you in charge of Simon's personal  
2 property to remove documents off the estate when he  
3 died?

4 MR. SIMON: Objection; relevance.

5 A I don't understand the question.

6 Q Well, we have missing documents, Ted --

7 A Yes.

8 Q -- as you're aware, estate documents, trusts.  
9 Rachel came with --

10 How many documents did she give you that  
11 night?

12 MR. SIMON: Objection; form. That's not  
13 even --

14 Q Approximately how many documents did she bring  
15 to you that were estate planning documents?

16 A A couple.

17 Q And then you have no idea where you have those  
18 documents?

19 A No. At this time, I don't.

20 Q In those documents, you weren't aware of any  
21 documents that were supposed to be tendered back to the  
22 estate?

23 MR. SIMON: Objection.

24 Q You removed property from the estate or had  
25 someone remove it on your behalf. Did you have it



1 returned to the estate?

2 MR. SIMON: Objection; form. Didn't let him  
3 answer. Compound questions.

4 Q Were you requested by any parties to turn  
5 those documents over to them?

6 A I don't believe so.

7 MR. ELIOT BERNSTEIN: I'd like to submit this  
8 as an exhibit. Can we get a copy of that real  
9 quick.

10 (Recess taken.)

11 (Exhibit A was marked for identification.)

12 MR. STAMOS: Can you describe that for us? We  
13 don't have a copy.

14 Q (By Mr. Eliot Bernstein) Ted, could you  
15 describe that document.

16 MR. ROSE: (Indicating.)

17 MR. STAMOS: Is that the police report  
18 document?

19 MR. ELIOT BERNSTEIN: Yes.

20 MR. STAMOS: Yeah, we have that. I think we  
21 have that.

22 MR. ROSE: I'm just trying to be helpful.

23 MR. STAMOS: Thank you.

24 Is that topped by the February 11, 2014 fax  
25 number -- fax legend?



1 MR. ROSE: This one says January 31, '13.

2 MR. STAMOS: Oh.

3 MR. ROSE: The report entry though is --  
4 starts with the words "On 9/13/12 at 12:11 hours."

5 MR. STAMOS: Oh, okay. We don't have that  
6 one. All right.

7 THE WITNESS: Okay.

8 Q (By Mr. Eliot Bernstein) You were talking to  
9 the sheriff's department on this day, correct?

10 A Yes, I was.

11 Q And that's the day your father died, right?

12 A Yes.

13 Q Did you advise the sheriff's department that  
14 your father might have been overdosed or the likes by  
15 his girlfriend?

16 A No.

17 Q No?

18 A No.

19 Q Okay. Were you advised by anybody that your  
20 father could have been overdosed?

21 A Yes.

22 Q That's good. So now you're remembering that  
23 you did talk to the sheriff's department that day?

24 MR. SIMON: Objection; move to strike,  
25 argumentative.



1 Q Did you voice concerns to Delray Hospital that  
2 your father might have been overdosed or taken too much  
3 medication?

4 MR. SIMON: Objection; asked and answered.

5 Q Okay. Can you read in the 11th line.

6 A What is the first word?

7 Q It will be at the end of that sentence. "He,"  
8 being you, Ted, "said," can you read that?

9 A "He said he voiced his concerns to the doctors  
10 at Delray Community Hospital but they advised there did  
11 not appear to be any suspicious circumstances  
12 surrounding Simon's death and they would not be  
13 conducting an autopsy."

14 Q Can you keep reading the next sentence,  
15 please.

16 A "Ted contacted both a private company and the  
17 Palm Beach County Medical Examiner's Office regarding  
18 having an autopsy conducted."

19 Q Would you like to change your prior statement?

20 MR. SIMON: Objection; argumentative, form.

21 Q Does that say you contacted the private  
22 autopsy firm?

23 MR. SIMON: Objection.

24 A It says, "Regarding."

25 MR. SIMON: Document says what it says.



1 Q Did you contact a private company regarding  
2 doing an autopsy?

3 A I believe that I did.

4 Q Oh, now you did, okay.

5 MR. SIMON: Objection; move to strike,  
6 argumentative.

7 Q Did you contact the Palm Beach County Medical  
8 Examiner's Office about having an autopsy?

9 A I can't recall.

10 Q Well, read the next line. Did you tell a  
11 sheriff's deputy that?

12 A Which line are you asking me to read?

13 Q The one that is -- I think it's like 14. Hold  
14 on.

15 MR. SIMON: Eliot, I'm going to give you two  
16 more questions, and then we're going to do my  
17 questions, and then I'm going to stop.

18 MR. ELIOT BERNSTEIN: I've got a few more  
19 questions.

20 MR. SIMON: You've got two.

21 MR. ELIOT BERNSTEIN: And these are very  
22 serious questions, so please. This could have --  
23 you know, potential murder of my father. I know  
24 you're concerned because my father spoonfed you his  
25 whole life.



1 MR. SIMON: Nobody from the insurance  
2 department --

3 Q Ted, on Line 15 --

4 MR. SIMON: We're done now.

5 Q -- Ted contacted -- it starts with "Ted  
6 contacted." Could you read that into the record,  
7 please.

8 MR. SIMON: You can read that.

9 Q Three lines up from the bottom of the first  
10 paragraph.

11 A "Ted contacted both the private company and  
12 the Palm Beach County Medical Examiner's Office  
13 regarding having an autopsy conducted. Both advised he  
14 should contact the Palm Beach County Sheriff's Office."

15 Q Did you contact the Palm Beach County  
16 Sheriff's Office?

17 A I don't remember.

18 MR. SIMON: We're done.

19 Q You don't recall that you're --

20 MR. ELIOT BERNSTEIN: I'm not done. I have  
21 questions.

22 MR. SIMON: You're done. We agreed to five to  
23 eight. I'm going to ask him two questions and then  
24 we're out of here.

25 MR. ELIOT BERNSTEIN: Then you're out of time.



1 MR. SIMON: Come on.

2 Okay.

3 MR. ELIOT BERNSTEIN: Yeah.

4 (Mr. Simon and Mr. Ted Bernstein exit the  
5 room.)

6 MR. ROSE: We're temporarily off the record.

7 (Recess taken.)

8 MR. SIMON: This is Adam Simon. I just have  
9 two or three questions.

10 MR. ELIOT BERNSTEIN: Well -- so you're  
11 interrupting my line of questioning? I was  
12 questioning. So we should take this up with the  
13 judge to give me more time?

14 MR. SIMON: Please do.

15 MR. ELIOT BERNSTEIN: Okay, we will.

16 MR. SIMON: Please do. Please. Please do.  
17 Yeah, the judge has been so --

18 (Cross-talking. Interruption by the  
19 reporter.)

20 MR. ELIOT BERNSTEIN: Your father would be  
21 ashamed.

22 MR. SIMON: All right. You guys ready?

23 MR. STAMOS: We're ready.

24 CROSS- EXAMI NATION

25 BY MR. SIMON:



1 Q Ted, we talked about the 2000 insurance trust,  
2 correct?

3 A Yes.

4 Q Have you seen any documents produced by anyone  
5 that assigned the ownership of the Capital Bankers  
6 policy to the 2000 trust?

7 A No, I haven't. It's my understanding that  
8 that -- that trust never received any assets, didn't  
9 receive the insurance policy, was never named as a  
10 beneficiary.

11 Q Never named as a beneficiary or an owner,  
12 correct?

13 A Or an owner.

14 Q Around the time of the reinstatement of the  
15 policy that you discussed, did you have any  
16 conversations with your father regarding the beneficiary  
17 of the policy and the purpose of the policy?

18 A I did.

19 Q And can you describe that conversation.

20 A So we were having conversations at that time  
21 about a buy/sell agreement, you know, buying each other  
22 out of the business as he was winding things down in his  
23 career, and I wanted a life insurance policy because we  
24 were partners in that business and I, you know, was  
25 hoping that we would get a life insurance policy, but he



1 made it, you know, emphatically clear, and I knew it  
2 from the reinstatement process, and I also just knew it  
3 from his medical history, that there was really little  
4 chance or no chance of getting another life insurance  
5 policy on his life. So I thought it might be easy to  
6 use existing life insurance and just change the  
7 beneficiary portion of the policy to take care of the  
8 needs that we would have needed in the buy/sell  
9 agreement discussions, but he was unwilling to do that.  
10 I guess he was unwilling to do that because he felt it  
11 was part of his overall plan to have those life  
12 insurance policies, you know, do other things to be left  
13 obviously for his children through the trust.

14 MR. SIMON: I have nothing further.

15 MR. ELIOT BERNSTEIN: I'd like to ask you a  
16 question on that.

17 RE-CROSS EXAMINATION

18 BY MR. ELIOT BERNSTEIN:

19 Q You mentioned the policy. You're the trustee  
20 of this lost trust. Do you have possession of the  
21 policy?

22 A I think I have a copy of the policy.

23 Q A fully executed life insurance policy?

24 MR. SIMON: Objection; relevance.

25 Q Have you produced that policy to the court?



1 MR. SIMON: Objection; relevance. The  
2 policy's been paid out by the carrier.

3 Q The policy, do you have a copy of the actual  
4 policy from the carrier?

5 A A copy of the policy? I think so.

6 Q Fully executed?

7 MR. SIMON: Objection.

8 A I don't know what that means.

9 Q A policy that has all the pages to it that's a  
10 complete policy, that's got the beneficiaries, the death  
11 benefits, all that listed out. A copy of the policy.

12 MR. SIMON: Objection; form --

13 Q Do you have possession of that?

14 MR. SIMON: Objection; form. Objection;  
15 foundation.

16 Q Do you have the policy?

17 MR. SIMON: Objection, relevance.

18 A I believe I have a copy of what the insurance  
19 company sent during this time of reinstatement. I  
20 believe I have a copy of the insurance policy. Whether  
21 executed, I -- I don't know what they deem executed.

22 Q You have a copy of the insurance policy, okay.  
23 Have you given that in your production?

24 MR. SIMON: Objection; misstated his answer.

25 Q I asked you did you put it in production. You



1 haven't answered.

2 MR. SIMON: He said he saw it in production.

3 He said what was produced.

4 Q No. I asked you, did you put your copy of the  
5 policy in production. You were supposed to --

6 MR. SIMON: No, you didn't.

7 Q -- put all your documents.

8 MR. SIMON: That's not what you said. That's  
9 not what he said. He said he found the documents  
10 through production.

11 Q Did you put the policy in with your production  
12 documents?

13 A I'm not sure.

14 Q You were asked by the court to produce  
15 documents. Did you produce all your documents?

16 A I don't know if I was asked by a court to  
17 produce documents, but...

18 Q Okay. We had to do a Rule 26 document  
19 request. You're the plaintiff. You produced documents.

20 MR. SIMON: I'm going to object to this line  
21 of questioning. He has answered about the policy.  
22 He believes he had a copy. He's not sure if --

23 Q You believe you had a copy --

24 (Cross-talking. Interruption by the  
25 reporter.)



1 Q Did you put the copy of the policy you claim  
2 to have with your production to the court when you  
3 produced?

4 A I'm not sure.

5 MR. SIMON: Jim, we're ten minutes over the  
6 agreed time. Do you have anything further?

7 MR. STAMOS: I just have one additional  
8 question, if you don't mind.

9 REDIRECT EXAMINATION

10 BY MR. STAMOS:

11 Q You described this conversation you had with  
12 your father a moment ago about the trust, how it related  
13 to the buy/sell and so forth. Do you recall that  
14 question and answer you just gave?

15 A Yes, I do.

16 Q And apropos of that conversation and any  
17 other -- apropos of that conversation, you understand  
18 that if the court recognizes the '95 trust as being the  
19 appropriate beneficiary for the policy, that you will  
20 receive 20 percent of the proceeds, and that if the  
21 court doesn't recognize the '98 [sic] trust as the  
22 beneficiary of the insurance policy in question, you  
23 will receive none of the proceeds of that policy,  
24 correct?

25 MR. SIMON: Objection; it's a legal conclusion



1           whi ch i s probabl y i naccurate.

2           Q     I 'm asking your understandi ng.

3                   MR. SIMON:    Relevance.    Hi s understandi ng i s  
4           not going to determine that.

5           A     It's my understanding that if the trust is  
6           determined not to be the beneficiary of the insurance  
7           policy, that I will not receive whatever it was I was  
8           supposed to receive.    That's my -- what I understand.  
9           Anything else, I don't -- I don't know.

10          Q     Just one last -- but the corollary of that is  
11         your notion that if the court does recognize the trust  
12         as being the beneficiary, you'll receive something;  
13         you're just not sure what it is?

14          A     That's correct.

15                   MR. STAMOS:    Okay.    Thanks.    That's all I  
16         have.

17                   MR. SIMON:    I just have one more.

18         RE CROSS EXAMI NATI ON

19         BY MR. SIMON:

20          Q     Do you understand that there is a third  
21         possibility, that even if the trust is not acknowledged,  
22         it may not go to the estate?    It could possibly be  
23         decided to go somewhere else by the judge?    Do you  
24         understand that?

25          A     I do understand that.



1 MR. ELI OT BERNSTEI N: Okay. I have one last  
2 questi on.

3 MR. STAMOS: Let me ask -- let me follow that  
4 up.

5 REDI RECT EXAMI NATION

6 BY MR. STAMOS:

7 Q Where do you understand to be the third  
8 possibility as the destination for the proceeds of the  
9 policy?

10 A So there's, you know, all kinds of  
11 possibilities of where insurance proceeds can go when  
12 they're up for grabs like that and --

13 MR. SIMON: And I'm going to object, because  
14 this is all legal conclusion for the judge to  
15 deci de.

16 MR. STAMOS: I'm just following up your  
17 questi on. You asked him was there a third  
18 possibility; he said yes. I'm just trying to find  
19 out what third possibility he understands that  
20 there is.

21 MR. SIMON: I said third possibility that the  
22 judge would determine. That was my questi on.

23 MR. STAMOS: Yeah. Well, Adam, I'm just  
24 asking what he understands. If he has no  
25 understanding, he can tell me that and we can go



1 home.

2 A I understand that there's infinite  
3 possibilities of where it could go in the event that a  
4 judge makes a ruling on where they go.

5 MR. ELI OT BERNSTEIN: Okay. I have one last  
6 question.

7 RE CROSS EXAMI NATI ON

8 BY MR. ELI OT BERNSTEIN:

9 Q Ted, what's the primary beneficiary on the  
10 policy that you possess?

11 A The primary beneficiary, if I recall, was a --  
12 was a -- I think it was a voluntary employee benefit  
13 plan.

14 Q Would that happen to be LaSalle National  
15 Trust?

16 A Oh, boy, I -- I don't know.

17 Q You don't know who the primary beneficiary on  
18 the policy that you're the trustee for is?

19 MR. SIMON: Objection; asked and answered,  
20 argumentative.

21 We're done. Let's go.

22 Q One more question.

23 MR. SIMON: No. We're done.

24 Q Who's the contingent beneficiary named on it?  
25 Are you aware your father -- of his heavy



1 metal poison test, Ted? Ted?

2 MR. ROSE: I think Adam's terminated the  
3 deposition, so --

4 MR. SIMON: Yeah. We're way past --

5 MR. ROSE: You have no further questions in  
6 Chicago, right?

7 MR. SIMON: Way past.

8 MR. STAMOS: No, we're all set.

9 MR. ROSE: Have a good night, guys.

10 (Mr. Simon and Mr. Ted Bernstein exit the  
11 room.)

12 (Deposition concluded at 8:15 p.m.)

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ERRATA- SIGNATURE PAGE  
SIMON BERNSTEIN IRREVOCABLE TRUST VS. HERITAGE UNION  
LIFE INSURANCE  
Case No. 13 CV 3643  
DEPOSITION TAKEN May 6, 2015

Page \_\_\_\_\_ Line \_\_\_\_\_:  
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Under penalties of perjury, I declare that I have read the foregoing transcript and that the facts stated in it are true.

\_\_\_\_\_ Date

\_\_\_\_\_ TED BERNSTEIN



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CERTIFICATE OF OATH

STATE OF FLORIDA        )  
  )  
COUNTY OF PALM BEACH    )

I, Lisa Gropper, Registered Professional Reporter,  
Florida Professional Reporter, Notary Public, State of  
Florida, certify that TED BERNSTEIN personally appeared  
before me on the 6th day of May, 2015 and was duly  
sworn.

WITNESS MY HAND AND OFFICIAL SEAL this 19th day of  
May, 2015.

\_\_\_\_\_  
LISA GROPPER, RPR, FPR  
Notary Public, State of Florida  
My Commission No. : EE136111  
My Commission Expires: 11/18/2015



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CERTIFICATE OF REPORTER

STATE OF FLORIDA            )  
  )  
COUNTY OF PALM BEACH    )

I, LISA GROPPER, Registered Professional Reporter,  
Florida Professional Reporter, do hereby certify that I  
was authorized to and did stenographically report the  
deposition of TED BERNSTEIN; that a review of the  
transcript was requested; and that the foregoing  
transcript is a true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative,  
employee, or counsel of any of the parties, nor am I a  
relative or employee of any of the parties' attorney or  
counsel connected with the action, nor am I financially  
interested in the action.

Dated this 19th day of May, 2015.

\_\_\_\_\_  
Lisa Gropper, R. P. R., F. P. R.



1                   McCorkle Litigation Services, Inc.  
2                   200 N. LaSalle Street - Suite 2900  
3                   Chicago, Illinois 60601  
4                   (312) 263-0052

5  
6                   May 19, 2015

7                   The Simon Law Firm  
8                   303 East Wacker Drive  
9                   Suite 2725  
10                  Chicago, Illinois 60601  
11                  ATTN: Adam M. Simon, Esq.

12                  RE:     SIMON BERNSTEIN IRREVOCABLE TRUST VS. HERITAGE  
13                  UNION LIFE INSURANCE

14                  Dear Mr. Simon,

15                  Enclosed please find the deposition transcript of  
16                  TED BERNSTEIN in the above-captioned case taken on  
17                  May 6, 2015.

18                  Please have Mr. Bernstein read your transcript copy  
19                  and sign the attached errata sheet. Make a copy of the  
20                  errata sheet to attach to your copy of the transcript,  
21                  and then please forward the original errata sheet back  
22                  to our office.

23                  Please make arrangements to have this accomplished  
24                  as soon as possible. The failure to read and sign the  
25                  deposition could be constituted as a waiver if not  
26                  accomplished within a reasonable period of time.

27                  Your attention to this matter is appreciated.

28                  Sincerely,

29                  Lisa Gropper, RPR, FPR



<p><b>Exhibits</b></p> <p><b>T. Bernstein Exhibit 1</b> 33:10,11,13 34:9 40:21 48:22</p> <p><b>T. Bernstein Exhibit 10</b> 60:23,24</p> <p><b>T. Bernstein Exhibit 11</b> 62:9,11 65:4</p> <p><b>T. Bernstein Exhibit 14</b> 66:8,9</p> <p><b>T. Bernstein Exhibit 15</b> 67:2,4</p> <p><b>T. Bernstein Exhibit 16</b> 69:16,17,23,24</p> <p><b>T. Bernstein Exhibit 17</b> 71:18,19,20</p> <p><b>T. Bernstein Exhibit 18</b> 75:2,3 76:12</p> <p><b>T. Bernstein Exhibit 19</b> 11:17,18 19:17 29:8</p> <p><b>T. Bernstein Exhibit 2</b> 50:19,21</p> <p><b>T. Bernstein Exhibit 21</b> 18:15 25:13 81:8 100:3</p> <p><b>T. Bernstein Exhibit 22</b> 27:21,24</p> <p><b>T. Bernstein Exhibit 23</b> 77:12,13 81:22 83:6</p> <p><b>T. Bernstein Exhibit 24</b> 78:6 88:5,6</p> <p><b>T. Bernstein Exhibit 25</b></p> <p><b>T. Bernstein Exhibit 26</b> 90:20,21,22</p> <p><b>T. Bernstein Exhibit 3</b> 54:5,6,13</p> <p><b>T. Bernstein Exhibit 4</b> 55:13,14,15</p>	<p><b>T. Bernstein Exhibit 5</b> 57:8,9,10,11</p> <p><b>T. Bernstein Exhibit 8</b> 58:1,3</p> <p><b>T. Bernstein Exhibit 9</b> 59:23,24,25</p> <p><b>T. Bernstein Exhibit A</b> 82:2 108:11</p> <hr/> <p><b>1</b> 33:10,11,13 34:9 36:9,11 40:21 48:22 83:13 84:7</p> <p><b>10</b> 14:22 32:20 60:23, 24</p> <p><b>11</b> 16:5 62:9,11 65:4 108:24</p> <p><b>11th</b> 110:5</p> <p><b>12</b> 22:6,13 69:23</p> <p><b>12:11</b> 109:4</p> <p><b>13</b> 10:9 22:3,8,9 62:14 109:1</p> <p><b>13th</b> 97:8</p> <p><b>14</b> 66:8,9 111:13</p> <p><b>14th</b> 62:17</p> <p><b>15</b> 6:16 34:1 67:2,4 68:2,4 112:3</p> <p><b>15th</b> 33:17 34:10,14</p> <p><b>16</b> 6:16 67:17 69:16,17, 24</p> <p><b>17</b> 6:16 33:3 71:18,19, 20</p> <p><b>18</b> 75:2,3 76:12</p> <p><b>19</b> 11:17,18 18:22 19:17 29:8 51:15,20, 23</p> <p><b>1980</b> 22:21</p> <p><b>1992</b> 32:22 33:3,5</p> <p><b>1995</b> 10:20 13:14 16:25 22:15,22,25 23:2,9, 12,20,25 24:4 25:17 26:10 52:21 55:5 56:11 59:7 62:23 72:11 80:3 86:6,14, 20 99:17,25 102:4</p> <p><b>1995-ish</b> 22:21</p> <p><b>1998</b> 30:14</p> <p><b>19th</b> 33:18 36:7 53:23</p>	<p><b>2</b></p> <p><b>2</b> 34:10 47:4 50:19,21 79:13</p> <p><b>20</b> 12:12 15:13 22:3,8,9 78:13 118:20</p> <p><b>2000</b> 37:6,13,16,21 38:16 40:24 42:3,6 47:2, 18,25 48:5,9,17,24 49:6,17,18,24 50:1 51:13 52:11,19 53:1, 9 56:13 77:5 81:24 84:19 87:2,16,17 114:1,6</p> <p><b>2004</b> 27:6</p> <p><b>2008</b> 78:13 82:19</p> <p><b>2012</b> 10:9 34:2 51:16,20, 23 55:9 78:11 88:11, 21 89:11</p> <p><b>2013</b> 27:7 56:16 61:6 62:15 67:17 68:2,4 76:16</p> <p><b>2014</b> 73:7 108:24</p> <p><b>21</b> 13:16,18,20,25 14:6 15:10,12 16:20,23 18:15,18 21:19,22 25:8,13,16 26:10 27:14 29:7,8 51:23 55:9 56:19 60:10 61:18 77:1 81:8 100:3,5,6,8,9,11</p> <p><b>21st</b> 26:3</p> <p><b>22</b> 13:16,18 15:13,15 16:20,23 18:15,19 21:19,22 25:9 27:21, 24 51:23 55:9 56:16, 20 60:10 61:19 77:2 100:3,5,6,8,9,12</p> <p><b>23</b> 77:12,13 81:22 82:4 83:6</p> <p><b>24</b> 78:6,7,8,10 88:6</p> <p><b>25</b> 12:13 78:6,8,10,13 88:11</p> <p><b>26</b> 90:20,21,22 117:18</p> <p><b>2A</b> 85:5</p> <hr/> <p><b>3</b> 27:6 54:6,10,13</p> <p><b>30</b> 27:6 76:16</p> <p><b>31</b> 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34:22  <b>updates</b>                      34:12,20</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>vague</b>                      8:9,15 10:14 24:19                      102:23  <b>valid</b>                      99:17  <b>version</b>                      15:24 80:24  <b>versions</b>                      15:2  <b>view</b>                      28:13 87:20 92:5,10,                      11  <b>viewed</b>                      44:3,24  <b>virtue</b>                      45:1 46:21  <b>vivo</b>                      30:14  <b>voice</b>                      110:1  <b>voiced</b>                      110:9  <b>voluntary</b>                      121:12</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>W-9</b>                      21:25  <b>Wait</b>                      82:21  <b>waived</b>                      41:18 47:2,10 64:9  <b>waiver</b>                      53:25  <b>walk</b>                      33:8  <b>Walker</b>                      95:4,9 106:5,11  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**Robert Spallina**

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**From:** Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Friday, October 19, 2012 12:32 PM  
**To:** Robert Spallina; Pam Simon  
**Subject:** RE: Update

Robert,

We believe we have a solution to the life insurance policy which provides the desired result. We would like to discuss this with you at your earliest convenience. Until we have this conversation, please do not process anything further with the insurance company as we would like to avoid any unnecessary confusion for them. Pam, her husband Scooter, and I would like to have this initial conversation with you.

Let me know what is good for you and I can coordinate with Pam and Scooter.

Take care...

-----Original Message-----

**From:** Robert Spallina [mailto:rspallina@tescherspallina.com]  
**Sent:** Friday, October 19, 2012 7:19 AM  
**To:** Pam Simon  
**Cc:** Ted Bernstein  
**Subject:** Re: Update

Pam - My office is processing the claim as your father was the owner of the policy and the proceeds will likely be paid to the estate in the absence of finding the trust. As I mentioned previously there was a discussion with the carrier about possibly using the 2000 trust (the one you are carved out of but would be split 5 ways according to Ted) but I'm not sure that we will achieve that result. 11:00 on Tuesday your time is my lunch hour. I am out of the office all day and will reach out to you on Monday as my calendar is fairly packed next week and a status call will have to be later in the day sometime next week. Have a nice weekend.

Sent from my iPhone

On Oct 19, 2012, at 6:32 AM, "Pam Simon" <pambsimon@me.com> wrote:

> Hi Robert - I have the ss4 on the 1995 irrevocable trust so we should be able to take care of getting the payment. If you already have the death claim package from the carrier can you overnight it to me and we will take care of the payout? If you don't have the package, can you send me an original death certificate and I will request it from the carrier?

> Also, we would like to do a family status call Tuesday at 11 am  
> chicago time. Pls let us know if that works for you? Have a nice  
> weekend - Pam Simon

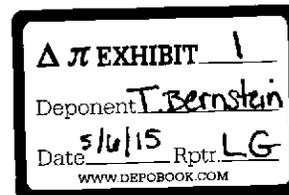
>  
> Thanks  
> Pam  
>

> On Oct 15, 2012, at 10:12 AM, Robert Spallina <rspallina@tescherspallina.com> wrote:

>  
>> Call me now  
>>

>> -----Original Message-----

>> From: Pam Simon [mailto:pambsimon@me.com]



>> Sent: Monday, October 15, 2012 11:11 AM  
>> To: Robert Spallina  
>> Subject: Re: Call 10/ 16/12 Tuesday 3:30 pm Chicago time  
>>  
>> I have some on the trust - should only be a few minutes  
>>  
>> On Oct 15, 2012, at 8:36 AM, Robert Spallina  
>> <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:  
>>  
>>> There are no updates at this time  
>>>  
>>> Sent from my iPhone  
>>>  
>>> On Oct 15, 2012, at 8:40 AM, "Pam Simon" <[pambsimon@me.com](mailto:pambsimon@me.com)> wrote:  
>>>  
>>>> Hi all - do you have time for status?

**Robert Spallina**

---

**From:** Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Wednesday, December 05, 2012 6:01 PM  
**To:** Robert Spallina; Pam Simon  
**Cc:** Simon David Scooter; Simon Pam  
**Subject:** RE: Proceeds

OK Robert, we understand and I will distribute the document to each of my siblings this evening if I can get to it, otherwise tomorrow morning for sure.

---

**From:** Robert Spallina [mailto:rspallina@tescherspallina.com]  
**Sent:** Wednesday, December 05, 2012 10:24 AM  
**To:** Pam Simon  
**Cc:** Ted Bernstein; Simon David Scooter; Simon Pam  
**Subject:** RE: Proceeds

Eliot is represented and I can send nothing to him directly. If you all want to send it to him then by all means do so. Keep in mind that he is likely to send it to his attorney anyway. I will leave it to your discretion.

**From:** Pam Simon [mailto:pambsimon@icloud.com]  
**Sent:** Wednesday, December 05, 2012 9:58 AM  
**To:** Robert Spallina  
**Cc:** Ted Bernstein; Simon David Scooter; Simon Pam  
**Subject:** Re: Proceeds

Hi Robert Did you send to Eliot yet - prob a good start.

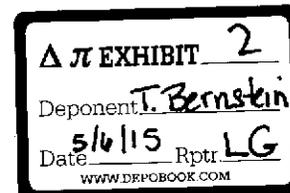
On Dec 3, 2012, at 1:35 PM, Robert Spallina <rspallina@tescherspallina.com> wrote:

Yes - but Eliot's counsel will probably hold things up

**From:** Pam Simon [mailto:pambsimon@icloud.com]  
**Sent:** Monday, December 03, 2012 12:12 PM  
**To:** Robert Spallina  
**Cc:** Ted Bernstein; Simon David Scooter; Simon Pam  
**Subject:** Re: Proceeds

Hi Robert - scooter will send you but can you send out for signatures? Thanks

On Dec 3, 2012, at 9:48 AM, Robert Spallina <rspallina@tescherspallina.com> wrote:



Please have him send me the document for my review and copy all. I want to make sure we have an agreement among all before I speak to the carrier.

**From:** Pam Simon [<mailto:pambsimon@icloud.com>]  
**Sent:** Sunday, December 02, 2012 7:39 AM  
**To:** Robert Spallina  
**Cc:** Ted Bernstein; Simon David Scooter; Simon Pam  
**Subject:** Re: Proceeds

Hi Robert - can you call Scooter as he has a copy of the document you can circulate for signatures to release the proceeds. 312-909-0369 Thx

On Nov 19, 2012, at 12:14 PM, "David (Scooter) Simon"  
<[dsimon@stpcorp.com](mailto:dsimon@stpcorp.com)> wrote:

May be available to achieve Si's intended results through waiver and settlement agreement.

Please have Mr. Spallina call my cell phone 312 909 0369

On Nov 19, 2012, at 1:11 PM, "Pam Simon"

<[pambsimon@icloud.com](mailto:pambsimon@icloud.com)> wrote:

Is the 2000 trust an irrevocable trust?

On Nov 19, 2012, at 11:57 AM, Robert Spallina  
<[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:

We are not responding to them with the document from 2000. We discussed that and you are carved out under that document. We need to find the 1995 trust ASAP

**From:** Pam Simon  
**[<mailto:pambsimon@icloud.com>]**  
**Sent:** Monday, November 19, 2012  
12:56 PM  
**To:** Ted Bernstein  
**Cc:** Robert Spallina  
**Subject:** Re: Proceeds

Pls send the executed trust document before u respond to heritage

On Nov 19, 2012, at 9:13 AM, Ted Bernstein  
<[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)> wrote:

Highly unlikely they will use another trust - what is SOP when doc can't be found?

Ted Bernstein  
561-988-8984

Sent from my Samsung Galaxy Note™

----- Original message -----  
Subject: RE: Proceeds  
From: Robert Spallina <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)>  
To: Pam Simon <[pambsimon@icloud.com](mailto:pambsimon@icloud.com)>  
CC: RE: Proceeds

Heritage responded back that they need a copy of the trust instrument. We do not have a copy and the only executed trust document that we have in which the policy is listed as an asset is the 2000 trust prepared by Al Gortz.

-----Original Message-----

From: Pam Simon  
[\[mailto:pambsimon@icloud.com\]](mailto:pambsimon@icloud.com)  
Sent: Friday,  
November 16, 2012  
2:35 PM  
To: Robert Spallina  
Cc: Bernstein Ted  
Subject: Proceeds

Hi Robert - any word  
on the proceeds ?  
Need help? Pam

Hi > his address is:

TESCHER & SPALLINA, P.A.  
Boca Village  
Corporate Center I  
4855 Technology Way  
Suite 720  
Boca Raton, Florida 33431

From: Pam Simon [mailto:[psimon@stpcorp.com](mailto:psimon@stpcorp.com)]  
Sent: Thursday, December 06, 2012 10:52 AM  
To: Jill Iantoni  
Cc: Ted Bernstein; [lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com); [iviewit@gmail.com](mailto:iviewit@gmail.com); [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)  
Subject: Re: Life Insurance - agreement

Thanks theo - will email u signed one today and fed x spallina - do u have his address?

On Dec 6, 2012, at 10:00 AM, "Jill Iantoni" <[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)> wrote:

Great. Thanks Ted for handling this!!

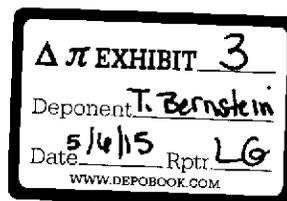
Jill

On Thu, Dec 6, 2012 at 8:58 AM, Ted Bernstein <[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)> wrote:

Hello,

Good news; the Heritage Union Life Insurance company is ready to make payment on the policy that insured Dad. There was an exhaustive search for the original trust document from 1995, which is the beneficiary of the policy owned by Dad. Since we have not been able to locate it, the attached agreement will permit the insurance company to make payment to a Trust account that will then distribute the proceeds in equal parts to the 5 of us. Robert Spallina recommended that I distribute this document so it can be reviewed by each of you, signed and then it can be submitted to the carrier. Please sign the document where applicable. Then email to me the signature page and Fedex the original to Robert Spallina's office. Once we have all signatures, the carrier should release proceeds quickly.

2



TS004519

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement and Mutual Release is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, at Chicago, Illinois by and between each of the following defined entities and individuals.

**PARTIES DEFINED**

"TED", as defined herein, refers to and means Ted S. Bernstein an individual residing in Boca Raton, Florida, his heirs, successors and/or assigns.

"PAM", as defined herein, refers to and means Pamela B. Simon an individual residing in Chicago, Illinois, her heirs, successors and/or assigns.

"ELIOT" as defined herein, refers to and means Eliot I. Bernstein, an individual residing in Boca Raton, Florida, his heirs, successors and/or assigns.

"JILL" as defined herein, refers to and means Jill M. Iantoni, an individual residing in Highland Park, Illinois, her heirs, successors and/or assigns.

"LISA" as defined herein, refers to and means Lisa S. Friedstein residing in Highland Park, Illinois, an individual, her heirs, successors and/or assigns.

"ALLY" as defined herein, refers to and means Alexandra L. Bernstein residing in White Plains, New York, an individual, her heirs, successors and/or assigns.

"ERIC" as defined herein, refers to and means Eric D. Bernstein residing in Boca Raton, Florida, an individual, his heirs, successors and/or assigns.

"MICHAEL" as defined herein, refers to and means Michael A. Bernstein residing in Boca Raton, Florida, an individual, his heirs, successors and/or assigns.

**"MOLLY"** as defined herein, refers to and means Molly N. Simon residing in Chicago Illinois, an individual, her heirs, successors and/or assigns.

**"THE ELIOT CHILDREN"** as defined herein, refers to and means Joshua, Jacob and Daniel Bernstein residing in Boca Raton, Florida, all individual(s), their heirs, successors and/or assigns.

**"THE JILL CHILD"** as defined herein, refers to and means Julia Iantoni residing in Highland Park, Illinois, an individual, her heirs, successors and/or assigns.

**"THE LISA CHILDREN"** as defined herein, refers to and means Max and Carley Friedstein residing in Highland Park, Illinois, an individual(s), both heirs, successors and/or assigns.

#### **DEFINITIONS**

"Agreement", as defined herein, refers to and means, this Settlement Agreement and Mutual Release.

"Party" or "Parties", shall refer to and mean an individual defined above whom shall sign on and be bound by this Settlement Agreement, and Parties shall refer to the individuals collectively.

"Trust", as defined herein refers to and means the Simon L. Bernstein Irrevocable Insurance Trust dtd 6/21/95.

#### **RECITAL'S**

WHEREAS, the Parties are all of the children and grandchildren of the marriage of Simon L. Bernstein and Shirley Bernstein;

WHEREAS, Simon L. Bernstein established the Trust in 1995 for the benefit of his wife,

**Shirley Bernstein, and their children, the Parties;**

**WHEREAS, Shirley Bernstein predeceased Simon L. Bernstein, and Simon L. Bernstein passed away on September 13, 2012;**

**WHEREAS, after a diligent search by the Parties, an executed copy of the Trust can not be found;**

**WHEREAS, the Trust is the beneficiary of life insurance policy number 1009208 issued by Heritage Union Life Insurance Company (the "Insurer") on the life of Simon L. Bernstein (the "Policy");**

**WHEREAS, the Parties desire to achieve the intent of Simon L. Bernstein on or about the date of the Trust and resolve any and all disputes and controversies that have arisen or may arise regarding the distribution of the death benefit proceeds of the Policy.**

**WITNESSETH**

**NOW THEREFORE, in consideration of the following covenants, promises and obligations, as well as other good and valuable consideration, the sufficiency of which is hereby acknowledged; it is agreed by and between the Parties as follows:**

**COVENANTS**

- 1. TED is appointed and hereby accepts the appointment to act as Trustee of the Trust.**
- 2. That TED, as Trustee, shall open a bank account in the name of the Trust (the "Trust Account").**
- 3. That TED, as Trustee shall deposit or direct the Insurer to deposit the death benefit proceeds of the Policy into the Trust Account.**
- 4. That TED, as Trustee, shall pay expenses of the Trust including the cost of filing a tax return from the proceeds in the Trust Account.**
- 5. That TED, as Trustee, shall distribute all remaining proceeds in the Trust Account equally (in 20% shares) to each of TED, PAM, ELIOT, JILL and LISA.**

6. That TED, as Trustee, upon completing the distribution in ¶5 above and the filing of the tax return contemplated in ¶4 above shall close the Trust Account.
7. Upon receipt of the Settlement Agreement executed by all Parties and upon fulfillment of all of the covenants and obligations contained in ¶1 through ¶6 above, TED, PAM, ELIOT, JILL, AND LISA, ALLY, ERIC, MICHAEL, MOLLY, THE ELIOT CHILDREN, THE JILL CHILD AND THE LISA CHILDREN and each of them in their own individual capacity, shall respectively acquit, release, and forever discharge TED, both individually and as Trustee, and each and every other Party from any and all claims, demands, liabilities, obligations, causes and causes of action of whatever kind or nature, known or unknown, suspected or unsuspected by each of them, which each of them now owns or holds or at any time heretofore owned or held as against each other arising out of any matter related to or associated with the Policy and/or the Trust, and without limiting the generality of the foregoing, all claims, demands, liabilities, obligations, causes and causes of action arising out of or in any way connected with: a) the receipt of the death benefit proceeds of the Policy by the Trust; b) arising out of or in any way connected to the operation and management of the Trust, or the actual terms of the Trust in the event it should be located subsequent to the date of this Agreement regardless as to whether all of the covenants and obligations of this Agreement have been executed to completion.
8. All demands and notices given hereunder shall be sent by mail addressed to the respective Parties with a copy to David B. Simon, The Simon Law Firm, 303 E. Wacker Dr., Suite 210, Chicago, IL 60601-5210.
9. The Parties hereby represent to one another that they have full power and authority to enter into this Settlement Agreement and carry out their obligations hereunder. All Parties further represent that this Settlement Agreement has been duly executed and delivered.
10. This Settlement Agreement embodies the entire understanding of the Parties. All prior correspondence, conversations, memoranda and agreements have been merged into and replaced by this Settlement Agreement.
11. If a Party breaches this Settlement Agreement, the breaching Party shall reimburse the non-breaching Parties for all reasonable costs, attorney's fees, and expenses incurred by them in enforcing the terms and provisions of the Settlement Agreement.
12. This Settlement Agreement shall (i) be governed and construed in accordance with the laws of the State of Illinois and all claims or controversies arising out of this Settlement Agreement shall be brought within the exclusive jurisdiction of the State of Illinois; (ii) inure to the benefit of and be binding upon the Parties themselves, as well as their respective heirs, executors, predecessors, successors and assigns.
13. All Parties have been represented by counsel, or have had the opportunity to seek the advice of counsel, and if they have sought counsel then such counsel has reviewed this Settlement Agreement and recommended that their respective clients enter into it.
14. This Settlement Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute an original. Facsimile signatures of the Parties shall as valid and binding as original signatures.

15. **Should any provision contained in this Agreement be deemed illegal or unenforceable as a matter of law, the remainder of this Agreement shall remain binding and continue in full force and effect.**
16. **The signatories state that they have read and understand this Settlement Agreement and that they intend to be legally bound by the same.**

Agreed and accepted this date and year first written above.

**TED S. BERNSTEIN**

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

**PAMELA B. SIMON**

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

**LISA S. FRIEDSTEIN**

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

**ERIC BERNSTEIN**

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

**MOLLY N. SIMON**

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

**THE JILL CHILD**

Jill Iantoni, Parent

Guy Iantoni, Parent

Address: \_\_\_\_\_

**ELIOT I. BERNSTEIN**

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

**JILL M. IANTONI**

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

**ALEXANDRA L. BERNSTEIN**

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

**MICHAEL BERNSTEIN**

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

**THE ELIOT CHILDREN**

Eliot I. Bernstein, Parent

Candace Bernstein, Parent

Address: \_\_\_\_\_

**THE LISA CHILDREN**

Lisa Friedstein, Parent

Jeffrey Friedstein, Parent

Address: \_\_\_\_\_

Robert Spallina

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**From:** Robert Spallina  
**Sent:** Tuesday, January 22, 2013 12:38 PM  
**To:** 'Jill Iantoni'  
**Cc:** Ted Bernstein, Lisa Friedstein, Pam Simon; Christine Yates; Kimberly Moran  
**Subject:** RE: Heritage Policy

We can discuss on Thursday but yes and no

**From:** Jill Iantoni [mailto:jilliantoni@gmail.com]  
**Sent:** Tuesday, January 22, 2013 12:36 PM  
**To:** Robert Spallina  
**Cc:** Ted Bernstein; Lisa Friedstein; Pam Simon; Christine Yates; Kimberly Moran  
**Subject:** Re: Heritage Policy

That time works for me/Jill.

Robert, if the proceeds go to the estate/grandchildren's share, is there a chance that creditors could get this money AND would this amount of 1.7 Million put the estate over 5.1 Million, where it would be taxed?

Thanks  
Jill

On Tue, Jan 22, 2013 at 11:16 AM, Robert Spallina <rspallina@tescherspallina.com> wrote:

I received a letter from the company requesting a court order to make the distribution of the proceeds consistent with what we discussed. I have traded calls with their legal department to see if I can convince them otherwise. I am not optimistic given how long it has taken them to make a decision. Either way I would like to have a fifteen minute call to discuss this with all of you this week. There are really only two options: spend the money on getting a court order to have the proceeds distributed among the five of you (not guaranteed but most likely probable), or have the proceeds distributed to the estate and have the money added to the grandchildren's shares. As none of us can be sure exactly what the 1995 trust said (although an educated guess would point to children in light of the document prepared by Al Gortz in 2000), I think it is important that we discuss further prior to spending more money to pursue this option. Hopefully I will have spoken with their legal department by Thursday. I would propose a 10:30 call on Thursday EST. Please advise if this works for all of you.

Robert L. Spallina, Esq.

TESCHER & SPALLINA, P.A.

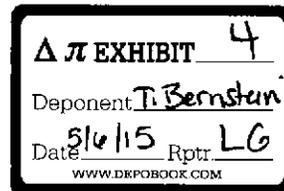
4855 Technology Way Suite 720

Boca Raton, Florida 33431

Telephone: 561-997-7008

Facsimile: 561-997-7308

E-mail: rspallina@tescherspallina.com



If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at [www.tescherspallina.com](http://www.tescherspallina.com)

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**Robert Spallina**

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**From:** Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Tuesday, January 22, 2013 1:34 PM  
**To:** Robert Spallina; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates  
**Cc:** Kimberly Moran  
**Subject:** RE: Heritage Policy

Robert,

We are in the midst of arranging a phone call between myself, Pam, Eliot, Christine Yates, Jill and Lisa. We were hoping to have that call today but Christine cannot make it until Thursday. I think it is imperative for this call to occur prior to anything else being done, including your call with their legal department. This way, we can establish whether there is going to be an agreement among the 5 of us, or not.

I completely agree with your assessment below of the options available here.

Please feel free to call me to discuss.

Ted

**From:** Robert Spallina [mailto:rspallina@tescherspallina.com]  
**Sent:** Tuesday, January 22, 2013 12:16 PM  
**To:** Ted Bernstein; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates  
**Cc:** Kimberly Moran  
**Subject:** Heritage Policy

I received a letter from the company requesting a court order to make the distribution of the proceeds consistent with what we discussed. I have traded calls with their legal department to see if I can convince them otherwise. I am not optimistic given how long it has taken them to make a decision. Either way I would like to have a fifteen minute call to discuss this with all of you this week. There are really only two options: spend the money on getting a court order to have the proceeds distributed among the five of you (not guaranteed but most likely probable), or have the proceeds distributed to the estate and have the money added to the grandchildren's shares. As none of us can be sure exactly what the 1995 trust said (although an educated guess would point to children in light of the document prepared by Al Gortz in 2000), I think it is important that we discuss further prior to spending more money to pursue this option. Hopefully I will have spoken with their legal department by Thursday. I would propose a 10:30 call on Thursday EST. Please advise if this works for all of you.

Robert L. Spallina, Esq.

TESCHER & SPALLINA, P.A.

4855 Technology Way, Suite 720

Boca Raton, Florida 33431

Telephone: 561-997-7008

Facsimile: 561-997-7308

E-mail: [rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at [www.tescherspallina.com](http://www.tescherspallina.com)

The information contained in this message is legally privileged and confidential information intended only for the use of the individual or entity named above. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. If you have received this communication in error, please immediately notify us by e-mail or telephone. Thank you.

**Robert Spallina**

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**From:** lisa.friedstein@gmail.com on behalf of lisa friedstein (lisa@friedsteins.com)  
**Sent:** Friday, January 25, 2013, 11:22 AM  
**To:** Robert Spallina; JILL Iantoni  
**Subject:** Re: Bernstein Estate 1/24/2013

Robert

I am not sure I am being understood...can you please call for a brief moment to discuss.. thank you.  
Please call Jill at 3128042318 she then will call me.  
Thank you.  
Lisa

On Jan 25, 2013 8:11 AM, "Robert Spallina" <rspallina@tescherspallina.com> wrote:  
I need to see Pam's life insurance trust to answer the question.

Sent from my iPhone

On Jan 25, 2013, at 8:51 AM, "lisa friedstein" <lisa@friedsteins.com> wrote:

Robert

What are the details/provisions of how the 10 grand kids inheritance works. For example...can the parents of the minors spend the money for any reason in any way ...who watches over this?

If the court order is that the money goes to the Gran kids out of the estate can the parents of the minor kids spend the money in any way or are their provisions for how and when they use this money?

Please answer as soon as you can as it will help us make our decision for Monday.

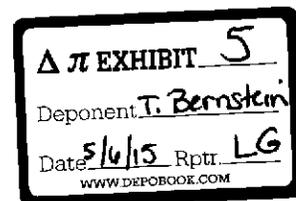
Thank you

Jill

On Jan 24, 2013 3:22 PM, "Jill Iantoni" <jilliantoni@gmail.com> wrote:

----- Forwarded message -----

**From:** Robert Spallina <rspallina@tescherspallina.com>  
**Date:** Thu, Jan 24, 2013 at 2:57 PM  
**Subject:** RE: Bernstein Estate 1/24/2013  
**To:** Jill Iantoni <jilliantoni@gmail.com>



Lisa - You need the decision to be unanimous or moving forward is not going to be possible. If money goes to the estate it is subject to creditor claims and cannot be distributed until we close the estate after creditors are paid. Any legal fees incurred by a beneficiary are their own and not the estate's fees. Stansbury is trying to substitute the estate for your father. That hearing is next week. Hope this helps

**From:** Jill Iantoni [mailto:[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)]  
**Sent:** Thursday, January 24, 2013 3:12 PM  
**To:** Robert Spallina  
**Cc:** Jill Iantoni  
**Subject:** Bernstein Estate 1/24/2013

Hi Robert,

thanks for todays call. Three questions.

One, if the 5 kids do NOT all agree that we should split the insurance proceeds amongst the 5 of us, what happens to the insurance proceeds? Can 4 out of 5 (or whatever the number is) over rule and move forward with the court hearing requesting that the insurance proceeds get paid out to the 5 children? If that is a NO, do the proceeds go directly to the estate? If the answer is the 10 grandchildren, will that be subject to creditors or would that money get paid out quickly (just as it would to the 5 of us) and avoid any potential law suit/creditors?

Two, if any of the 5 children have personal counsel representing them, are they allowed to have their bills sent to you/Estate for payment? If yes, is there a provision that the others can put in place that regulates the amount/or a provision that states it come out of their child(ren) portion of the estate?

Can you also clarify, that based on the conversation today, there is a chance that Bill S. case will be null and void and even if it is not, it is not towards Si Bernstein or his estate? Did I understand that correctly?

Thanks so much,

Jill

Robert Spallina

---

From: Robert Spallina  
Sent: Friday, February 08, 2013 8:41 PM  
To: Pam Simon  
Cc: Eliot Bernstein, Ted Bernstein, Lisa Sue Friedstein, Jill Iantoni, Jill M. Iantoni, Christine P Yates ~ Director @ Tripp Scott  
Subject: Re: Heritage Policy

The law does not REQUIRE a trust to pay proceeds. The terms of lost wills and trusts are routinely proved up through parole evidence. The lawyer I spoke with at Heritage told me that this happens once every ten days and the estate is rarely if ever the beneficiary of the proceeds on a lost trust instrument. I have NEVER heard of proceeds being paid to the probate court.

Your father changed himself to the owner of the policy because he wanted to have the RIGHT to change beneficiaries despite the fact that it causes inclusion of the proceeds in his estate for estate tax purposes. Very near to his death he requested beneficiary change forms but never actually changed the beneficiaries. I will give you one guess who he thought of including and it was none of his grandchildren. I counseled him not to do this and the form was never executed.

As for your father's intent, that is the most important thing and the court will always look to carry that out. The fact that he changed his dispositive documents to include only his grandchildren lends credibility to the fact that he intended that the insurance proceeds would go to his five children. He knew that the trust provided for his children some of whom he knew needed the money. Additionally we had a conference call prior to his death with all of you where he discussed his plans regarding his estate and your mother's estate with all of you. This should be of no surprise to anyone.

Bottom line is that we do not need to have the trust for the carrier to pay the proceeds. The carrier is looking for a court order to pay them to a successor trustee who will distribute them among the beneficiaries.

I do not and have never had a copy of the policy.

Lets stop making this more difficult than it is. Your father told me that the trust provided that the proceeds were going to his children. Pam saw him execute the trust with the same attorney that prepared her own trust a copy of which I have and will offer up to fill in the boilerplate provisions. We have an SS-4 signed by your mother to obtain the EIN. There is not one shred of evidence that the trust was terminated which is the only circumstance that would require payment of the proceeds to the estate.

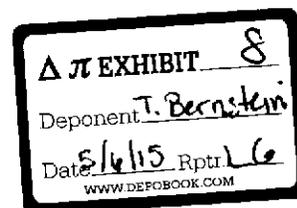
The fact that your father requested change forms prior to death and didn't execute them speaks to the existence of the trust and that he intended that you all receive an equal share of the proceeds.

I hope that this helps to guide you and unite you in your decision.

Have a nice weekend.

Sent from my iPhone

On Feb 8, 2013, at 7:41 PM, "Pam Simon" <[psimon@stpcorp.com](mailto:psimon@stpcorp.com)> wrote:



BT000048

Yad - bad news - we don't have copies of the policy - dad probably took it when he emptied his office / probably the trust too! The carrier seems to be the only one with a copy. As to the other items, we should do a call cause the premise is off. Have a good weekend.

Pam

On Feb 8, 2013, at 5:48 PM, "Eliot Bernstein" <[iviewit@gmail.com](mailto:iviewit@gmail.com)> wrote:

Thanks for your response to my analysis of the Heritage matter; however, I believe your comments assume I do not understand the trust concept and its utility, and your analysis is based on the theory of estate planning using trusts and not the importance of having the actual trust document. I started by again requesting a copy of the Heritage policy. I need to review the policy's provisions respecting how death benefit proceeds are dealt in situations where a beneficiary designation fails. This is a simple request. You and Pam indicated that you each have a copy of the policy. Robert said he has a copy of the policy. PLEASE send a copy to me. I assure you that nothing will transpire until I have reviewed the policy.

I have been advised that in situations where a beneficiary designation fails, an insurer will in almost all situations pay the proceeds into the probate court and ask the court to determine to whom the proceeds are payable and ask for a release. The position I took in my prior email is clear; that a probate court will likely decide that the proceeds will go to the grand children through the estate and the pour over trust. This analysis troubles you because the Heritage proceeds would thus be considered an estate asset and subject to creditor claims. I understand your concerns. But unless the 1995 trust document is located, and unless the Heritage policy provides otherwise, this is how it most likely will play out.

Your comments about Dad's desires and his estate planning experience are simply not relevant; however, I could understand that you may wish to make this argument to the probate court. All of the meetings, time and energy being spent trying to come up with a way to convince Heritage to pay the benefits pursuant to what Robert believes the 1995 trust said is wasted energy, unless Heritage agrees to pay the proceeds pursuant to some form of settlement and release agreement. If you want me to even consider such an arrangement, in addition to reviewing the Heritage policy, I will require a letter from Heritage specifically stating that Heritage may make the proceeds payment under such an arrangement. It should be easy to get such a letter if Heritage is willing to consider such an arrangement.

Now that you know my position, I will respond to your comments respecting my analysis in my prior email. We all know that like you and Pam, Dad spent his career in the insurance business. I also spent years in the insurance business. In fact, Dad was one of the best and most innovated at it. Just look at his and your company's (LIC) web site for confirmation. As an expert, Dad understood all the benefits of designating a trust as the beneficiary under a life policy. You keep the proceeds out of the estate and probate process, and the proceeds are not subject to creditor claims. You and Pam and even I understand these concepts too. So does Mr. Spallina, as an expert estates lawyer. All of us (you, Pam, Robert and me) also know that having the actual trust document is essential to ensuring that the insurance proceeds are actually paid to the trust. The reason why insurers will not make payment pursuant to a missing trust document is that the insured had the right and ability to make changes to the trust document, including the beneficiaries thereunder until the day he died. You commented that Mr. Spallina said it is Heritage's policy not to make payments to an estate in situations where a trust is lost. Is that your experience with insurance companies? Perhaps Heritage's position is that it will pay the proceeds to the court (not the estate) and the judge determines how the proceeds are distributed. My friends in the business tell me that this is precisely

what insurance companies do, albeit through the probate court. That is also why Mr Spallina included that clause I mentioned in Dad's will, so any such proceeds flow through to Dad's pour over trust as a backup. Most wills include such a clause even though many people employ a trust. Trusts do get lost or are revoked. Beneficiary designations fail for a variety of reasons.

Your comments regarding the many times Dad dealt with the Heritage policy in recent years interests me. In 2012 Dad did redo his estate plan with Mr. Spallina. In the last couple of years Dad and you (and perhaps Robert) dealt with reinstating the Heritage policy and considered a life payment buyout. In all those occasions, Dad could have changed the beneficiaries, but you state he did not. I understand, but fail to see the relevance, based on the above analysis. But because you are in the business and counsel your clients to use trusts, why did you not request a copy of the 1995 trust from Dad during those events? Why didn't Mr. Spallina require that Dad give him a copy during the 2012 estate planning overhaul, and insist on having a copy? Mr. Spallina told us that he and Dad met often and discussed Dad's financial affairs. Mr. Spallina knew and knows that having the actual trust document was essential, and I am find it hard to believe he did not insist on including a copy with Dad's 2012 estate planning documents. If I were Dad's estates lawyer and Dad did not provide me a requested copy, I would have copies of letters requesting the trust document, at the very least to protect myself against any claims. And why did Dad not make sure that you all had copies?

I also find it curious that no one has come forth to state the steps that were taken to locate the 1995 trust. Who took the steps, where did they look, and who did they speak with. I was not permitted to go into Dad's house after he died, so who took the contents of Dad's safe? Who looked at the contents of Dad's safe deposit box?

You start by stating that Dad did not have 10 Grandchildren in 1995, so it was not his then desire to name them as beneficiaries. But absent the actual trust document, it is possible he named his then living grandchildren. BUT, the 1995 trust document cannot be located, so we will never know.

My fraudulent conveyance analysis is based on the above comments. A creditor would argue that the named beneficiary was the 1995 trust. It was lost. In those cases, insurers pay death benefits to the probate court. The proceeds thus become part of the estate even if the judge decides that the proceeds go through the pour over trust. You are in the insurance business Ted. I am surprised you do not know this. Thus I remain concerned that if Heritage agrees to pay the proceeds in trust pursuant to some form of settlement and release (which is your plan to avoid creditors issues) that a creditors lawyer will seek to reach those proceeds on the fraudulent conveyance theory. Obviously, you and Robert are trying awfully hard to get Heritage to do this for the very reason of avoiding creditors' claims. More facts to help a creditor's lawyer reach the proceeds.

So I would suggest my economic analysis is correct when you consider the law and not just Dad's desires. Again, the law requires an actual trust document, not the concept of a trust. It is required because the trust document can be changed and is the best and only evidence of where the proceeds should go. Unfortunately, Dad intent or desires likely are not relevant. He knew this, which again is why I am shocked that Dad did not give copies to each of you.

Eliot I. Bernstein

Robert Spallina

---

From: Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]  
Sent: Wednesday, February 06, 2013 3:49 PM  
To: Eliot Bernstein (iviewit@gmail.com)  
Cc: 'Pam Simon'; Jill Iantoni; Lisa Friedstein (lisa.friedstein@gmail.com); Robert Spallina  
Subject: Heritage policy  
Attachments: image001.jpg

Eliot,

I have pasted your analysis re the Heritage policy below. The email did not get to me, not sure why.

The problem with your analysis is that it is not factually correct and therefore, you are drawing conclusions that are incorrect.

Dad's desires concerning the policy are crystal clear. There has never been a question concerning his desire. He named his irrevocable trust as beneficiary of the policy and he never changed that. He was the owner. He could have changed it as often as he wanted. He never did, not ever.

In 1995, Dad did not have 10 grandchildren. Therefore, it was never his intent, concerning this policy, to leave it to all of his grandchildren.

He chose Robert Spallina and Don Tescher to be his estate and tax attorneys as well as his personal representatives. Robert Spallina has told us on several occasions what Dad's wishes were for this policy. Dad was well aware of this policy. He was intimately aware of who owned it and who he named as beneficiary. When he was considering a life settlement, all of this information was part of those discussions.

As Robert has stated, Heritage's policy when it comes to a lost irrevocable trust, is to not pay the proceeds to the estate. What you are saying here is not correct: "*Last, because the 1995 trust document cannot be located, the proceeds should go to the beneficiaries under (Article IV 2)) and (Article III) of Dad's will, which picks up insurance proceeds under failed beneficiary designations. Under Dad's will and trust, these amounts, like the rest of his estate goes to his grandchildren in equal parts.*"

You are drawing conclusions for Heritage when you say, "nothing short of the actual 1995 trust document may be sufficient to Heritage." Why don't we let Heritage speak for Heritage, which I believe has already been done?

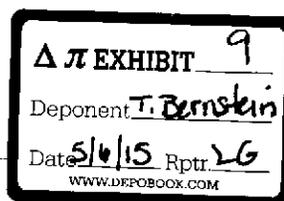
There is no fraudulent conveyance. These proceeds are not part of Dad's estate, they never were and Heritage has stated they do not intend to pay these proceeds to the estate of a person who clearly did not want them in his estate.

In late July of 2012, Dad executed his planning documents. He could have easily changed the beneficiary of the Heritage policy to be included in his estate. He was the owner, he could have done that with one change form. He did not. If he did not want to be bothered to do it himself, he could have asked Robert, his PR, to do it. People do this every day. Dad did not. Therefore, the proceeds remaining OUT of his estate, NOT payable to his grandchildren (who received everything else), is consistent with Dad's wishes. This policy is not in the domain of his will and trust agreement. To bring proceeds of a life insurance policy into the estate of a man who sold life insurance his entire career would go against everything Dad told every client he ever sold life insurance to during his career. It is unimaginable.

Therefore, the economic analysis is not correct. It simply is not necessary to address as it was never an option in this scenario.

This needs to be brought to resolution. Not only is it simple, it is black and white. Is your counsel involved in this matter for you? If so, has she spoken with Robert and communicated what you have said?

1



BT000051

We are going to do what is necessary to have the proceeds paid where they were intended to be paid, as quickly as possible now. If you think I am factually incorrect about any of this, please either call me or email me and explain where I may be wrong. It goes without saying, this is not my expertise. I am processing the same information that everyone else is working with and this is how I see it.

Ted

This is my analysis on the Heritage payout thus far. First, I would like to review the insurance policy as well as the official statements respecting investment returns, use of returns to pay premiums and loans taken from the policy. I understand Ted and Pam have the policy, and do not understand why Mr. Spallina thinks it is curious that I also want to review these materials. Second, I understand the expressed concerns that if the proceeds are paid to the estate then the proceeds would be subject to the claims of creditors of the estate. It is my understanding that the "plan" is to have the proceeds payable to a trust to avoid creditor claims; however, I have also been counseled that if a trust is utilized an estate creditor can challenge the trust transaction as a fraudulent conveyance used to avoid the creditor's claim. We have been told that Dad designated his 1995 trust as his beneficiary with Heritage. We were also told that that trust cannot be located. I would also like to review an affidavit that indicates the precise steps that were taken and by whom and with whom to locate the 1995 trust, and I would imagine that Heritage will require the same. Heritage, we were told, is now saying that the proceeds may have to go to the State under the applicable escheat laws, so Mr. Spallina is telling us that if Heritage accepts a new trust with all potential beneficiaries agreeing to the mechanism, that Heritage may pay the proceeds to this new trust and not to the State. I have been told that the reason the law requires a trust document (and not simply statements from someone who claims they saw the trust) is that it demonstrates Dad's desires, and because Dad had the right to change his mind and thus the beneficiaries under the trust, nothing short of the actual 1995 trust document may be sufficient to Heritage. Last, because the 1995 trust document cannot be located, the proceeds should go to the beneficiaries under {Article IV 2j} and [Article III] of Dad's will, which picks up insurance proceeds under failed beneficiary designations. Under Dad's will and trust, these amounts, like the rest of his estate goes to his grandchildren in equal parts. Thus, to the extent it is decided to use a new trust to avoid the escheat laws, the only beneficiaries that may be acceptable to me is the grandchildren. As I stated above, I and my siblings should remain concerned that any estate creditor could challenge the transaction as a fraudulent conveyance. Also, having the 5 children as beneficiaries with each having the right to disclaim in favor of their children (i.e., Dad's grandchildren) is not acceptable for 2 reasons. First, such a scheme is not consistent with Dad's wishes under his will and trust agreement. Whatever Dad may have provided under the 1995 trust is both unknown and not relevant as stated above. The second reason is simple economics. My kids would get a 33% distribution under the proper method, but only 20% under the other scheme. Regards,

Ted Bernstein - President



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950 Peninsula Corporate Circle, Suite 3010  
Boca Raton, FL 33487  
Tel: 561.988.8984  
Toll Free: 866.395.8984  
Fax: 561.988.0833  
Email: [Tbernstein@lifeinsuranceconcepts.com](mailto:Tbernstein@lifeinsuranceconcepts.com)  
[www.LifeInsuranceConcepts.com](http://www.LifeInsuranceConcepts.com)

Robert Spallina

**From:** Eliot Bernstein [iviewit@gmail.com]  
**Sent:** Saturday, February 09, 2013 5:40 PM  
**To:** 'Pam Simon'; 'Ted Bernstein'  
**Cc:** 'Lisa Sue Friedstein'; 'Jill Iantoni'; 'Jill M. Iantoni'; Robert Spallina; 'Christine P. Yates ~ Director @ Tripp Scott'; 'Irina Roach'  
**Subject:** RE: Heritage Policy

What meeting and for what? I am not doing anything with the insurance until I receive a copy of the policy from the carrier. Who at the carrier can I contact to have the policy sent to me on Monday and what is the number? eb

**From:** Pam Simon [mailto:psimon@stpcorp.com]  
**Sent:** Saturday, February 9, 2013 5:35 PM  
**To:** Ted Bernstein  
**Cc:** Eliot Bernstein; Lisa Sue Friedstein; Jill Iantoni; Jill M. Iantoni; Robert L. Spallina, Esq. ~ Attorney at Law @ Tescher & Spallina, P.A.; Christine P. Yates ~ Director @ Tripp Scott; Irina Roach  
**Subject:** Re: Heritage Policy

I'm good 10 am chicago time Sunday

On Feb 9, 2013, at 10:22 AM, "Ted Bernstein" <[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)> wrote:

Eliot - we do have the letter from Heritage that you refer to below. They will pay with an order from the court which is based on the agreement, among us, to pay the trust. It's not only easy, we already have the letter from them.

Why don't the 5 of us get on a call in the next day or two? There are a bunch of things to cover other than this policy, such as the property in the house.

Time suggestions??

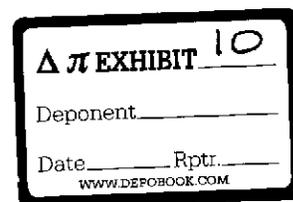
Ted  
561-988-8984  
[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

On Feb 8, 2013, at 7:41 PM, "Pam Simon" <[psimon@stpcorp.com](mailto:psimon@stpcorp.com)> wrote:

Yad - bad news - we don't have copies of the policy - dad probably took it when he emptied his office / probably the trust too! The carrier seems to be the only one with a copy. As to the other items, we should do a call cause the premise is off.  
Have a good weekend.  
Pam

On Feb 8, 2013, at 5:48 PM, "Eliot Bernstein" <[iviewit@gmail.com](mailto:iviewit@gmail.com)> wrote:

Thanks for your response to my analysis of the Heritage matter; however, I believe your comments assume I do not understand the trust concept and its utility, and your analysis is based on the theory of estate planning using trusts and not the importance of having the actual trust document. I started by again requesting a copy of the Heritage policy. I need to review the policy's



**Robert Spallina**

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**From:** Eliot Ivan Bernstein [iviewit@viewit.tv]  
**Sent:** Thursday, February 14, 2013 10:40 AM  
**To:** 'Ted Bernstein'; Robert Spallina; 'Pamela Beth Simon'; 'JILL BERNSTEIN IANTONI'; Jill M. Iantoni; 'Lisa S. Friedstein'; 'Christine P. Yates ~ Director @ Tripp Scott'  
**Subject:** RE: Eliot Representation

Please notify me of any probate court hearings so that I may attend and any actions by the carrier, as I have not consented to anything at this point or at the last group meeting I attended. Eliot

---

**From:** Ted Bernstein [mailto:tb Bernstein@lifeinsuranceconcepts.com]  
**Sent:** Thursday, February 14, 2013 8:33 AM  
**To:** 'Eliot Ivan Bernstein'; Robert L. Spallina, Esq. ~ Attorney at Law @ Tescher & Spallina, P.A.; Pamela Beth Simon; JILL BERNSTEIN IANTONI; Jill M. Iantoni; Lisa S. Friedstein; Christine P. Yates ~ Director @ Tripp Scott  
**Subject:** RE: Eliot Representation

Robert,

Please move forward as we discussed in the last group phone call in which we decided to have Heritage pay your trust account or a trust that you would act as Trustee. Heritage has stated that they will pay based on a court order showing that there is consensus among the 1995 Trust beneficiaries. Let's get this done.

Ted

---

**From:** Eliot Ivan Bernstein [mailto:iviewit@viewit.tv]  
**Sent:** Wednesday, February 13, 2013 8:52 AM  
**To:** Robert L. Spallina, Esq. ~ Attorney at Law @ Tescher & Spallina, P.A.; Ted Bernstein; Pamela Beth Simon; JILL BERNSTEIN IANTONI; Jill M. Iantoni; Lisa S. Friedstein; Christine P. Yates ~ Director @ Tripp Scott  
**Subject:** Eliot Representation

I will be seeking independent counsel for myself personally, as Candice and I have chosen to have Christine represent our children on the Heritage matter and perhaps other matters to avoid any conflicts. In the interim, please copy me and Christine on all correspondences involving the estates of Simon and Shirley until further notice of who my personal attorney will be. Eliot



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Eliot I. Bernstein

Δ π EXHIBIT 11  
Deponent T. Bernstein  
Date 5/6/15 Rptr LG  
www.DEPBOOK.COM

**Robert Spallina**

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**From:** Eliot Ivan Bernstein [iviewit@iviewit.tv]  
**Sent:** Wednesday, February 13, 2013 8:52 AM  
**To:** Robert Spallina; Theodore S. Bernstein; Pamela Beth Simon; JILL BERNSTEIN IANTONI; Jai M. Iantoni; Lisa S. Friedstein; Christine P. Yates ~ Director @ Tripp Scott  
**Subject:** Eliot Representation

I will be seeking independent counsel for myself personally, as Candice and I have chosen to have Christine represent our children on the Heritage matter and perhaps other matters to avoid any conflicts. In the interim, please copy me and Christine on all correspondences involving the estates of Simon and Shirley until further notice of who my personal attorney will be. Eliot



Eliot I. Bernstein  
Inventor  
Iviewit Holdings, Inc. - DL  
Iviewit Holdings, Inc. - DL (yes, two identically named)  
Iviewit Holdings, Inc. - FL  
Iviewit Technologies, Inc. - DL  
Uviewit Holdings, Inc. - DL  
Uview.com, Inc. - DL  
Iviewit.com, Inc. - FL  
Iviewit.com, Inc. - DL  
I.C., Inc. - FL  
Iviewit.com LLC - DL  
Iviewit LLC - DL  
Iviewit Corporation - FL  
Iviewit, Inc. - FL  
Iviewit, Inc. - DL  
Iviewit Corporation  
2753 N.W. 34th St.  
Boca Raton, Florida 33434-3459  
(561) 245-8588 (o)  
(561) 886-7628 (c)  
(561) 245-8644 (f)  
[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)  
<http://www.iviewit.tv>  
<http://iviewit.tv/inventor/index.htm>  
<http://iviewit.tv/wordpress>  
<http://www.facebook.com/#!/iviewit>  
<http://www.myspace.com/iviewit>

**Kimberly Moran**

---

**From:** Peter M. Feaman [pfeaman@feamanlaw.com]  
**Sent:** Monday, February 04, 2013 3:59 PM  
**Subject:** Read: Estate of Simon Bernstein

Your message

To: pfeaman@feamanlaw.com  
Subject:

was read on 2/4/2013 3:59 PM.

**Robert Spallina**

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**From:** Robert Spallina  
**Sent:** Thursday, March 14, 2013 7:17 AM  
**To:** Pam Simon  
**Cc:** David (Scooter) Simon; Ted Bernstein  
**Subject:** Re: Simon Bernstein

Waiting for carrier to clear up title and beneficiary designation. Did you get the email I sent everyone from the carrier last week? Scooter knows where we are in process.

Sent from my iPhone

On Mar 14, 2013, at 12:41 AM, "Pam Simon" <[psimon@stpcorp.com](mailto:psimon@stpcorp.com)> wrote:

Next step? By who? Or is it whom?

On Mar 13, 2013, at 7:42 PM, "Robert Spallina" <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:

Thanks.

Sent from my iPhone

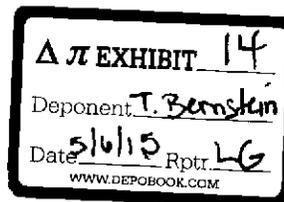
On Mar 13, 2013, at 6:02 PM, "David (Scooter) Simon" <[dsimon@stpcorp.com](mailto:dsimon@stpcorp.com)> wrote:

last of the docs we can dig up.

**Very Truly Yours,**  
**David B. Simon**  
**The Simon Law Firm**  
303 East Wacker Drive, Suite 210  
Chicago, IL 60601

Phone: (312) 819-0730  
Fax: (312) 819-0773  
E-mail: [dsimon@chicago-law.com](mailto:dsimon@chicago-law.com)

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**From:** Cheryl Sychowski  
**Sent:** Wednesday, March 13, 2013 4:32 PM  
**To:** David (Scooter) Simon  
**Subject:** Simon Bernstein

<DOC (9).PDF>

**Robert Spallina**

---

**From:** Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Saturday, March 16, 2013 5:26 PM  
**To:** Robert Spallina  
**Cc:** Pam Simon; David (Scooter) Simon; lisa.friedstein@gmail.com; Donald Tescher; Jill Iantoni  
**Subject:** RE: Simon Bernstein Trust - Policy #1009208

Robert > Pam, Scooter, Jill, Lisa and I will be discussing several related issues over the weekend. I think one of my previous emails asked you to hold off doing anything concerning the life insurance policy after a specific date. Please continue to work with the insurance company on our behalf.

Thank you,

Ted

---

**From:** Robert Spallina [mailto:rspallina@tescherspallina.com]  
**Sent:** Friday, March 15, 2013 1:30 PM  
**To:** Ted Bernstein  
**Cc:** Pam Simon; David (Scooter) Simon; lisa.friedstein@gmail.com; Donald Tescher; Jill Iantoni  
**Subject:** RE: Simon Bernstein Trust - Policy #1009208

Ted – please respond to Jill’s inquiry. There still seems to be some confusion on what the course of action is despite our conversations last Friday and Monday this week, and the emails I forwarded from the carrier last Friday and yesterday.

**From:** Jill Iantoni [mailto:jilliantoni@gmail.com]  
**Sent:** Friday, March 15, 2013 1:11 PM  
**To:** Robert Spallina  
**Cc:** Pam Simon; David (Scooter) Simon; Ted Bernstein; lisa.friedstein@gmail.com; Donald Tescher  
**Subject:** Re: Simon Bernstein Trust - Policy #1009208

Robert,

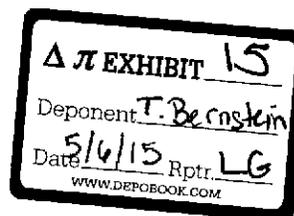
what do you mean in your email that we will be using your trust account? Are you referring to where the proceeds get paid out?

Thank you,

Jill

On Fri, Mar 15, 2013 at 11:03 AM, Robert Spallina <rspallina@tescherspallina.com> wrote:

All - The carrier is in control of things at this point. When title/beneficiary designation is cleared then we can discuss venue. Having said that, we have had discussions with Ted on Friday last week and Monday of this



week and he would like for things to continue as discussed here in Palm Beach County and using our trust account.

Ted - please confirm by reply email our conversation regarding the above and your desire to have us continue handling this matter until resolution in light of the email you sent us last Wednesday night on behalf of you and your siblings.

Regards,

Robert L. Spallina, Esq.

TESCHER & SPALLINA, P.A.

4855 Technology Way, Suite 720

Boca Raton, Florida 33431

Telephone: 561-997-7008

Facsimile: 561-997-7308

E-mail: [rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)

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**From:** Pam Simon [mailto:[pambsimon@icloud.com](mailto:pambsimon@icloud.com)]  
**Sent:** Friday, March 15, 2013 9:09 AM  
**To:** David (Scooter) Simon  
**Cc:** Robert Spallina; Ted Bernstein; Jill Iantoni; [lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

**Subject:** Re: Simon Bernstein Trust - Policy #1009208

Ok - who decides this?

On Mar 15, 2013, at 8:04 AM, "David (Scooter) Simon" <[dsimon@stpcorp.com](mailto:dsimon@stpcorp.com)> wrote:

My only concern is forum. We should make sure we pick the venue for an inter pleader action. Lets also decide a time frame for the carrier.

On Mar 15, 2013, at 7:07 AM, "Robert Spallina" <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:

There is a break in title and beneficiary designation prior to getting where the confirmation letters state where we are today - Si as owner and the trust as beneficiary. They do not want to name every owner and beneficiary in a pleading and inter plead the funds as it will be costly and timely for them and everyone involved. Let's hope they are able to piece it together.

Sent from my iPhone

On Mar 15, 2013, at 7:59 AM, "Ted Bernstein" <[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)> wrote:

Robert > Do we know exactly what he is trying to accomplish? If we know that, maybe we can be more helpful.

**From:** Pam Simon [mailto:[pambsimon@icloud.com](mailto:pambsimon@icloud.com)]  
**Sent:** Thursday, March 14, 2013 10:35 PM  
**To:** Robert Spallina  
**Cc:** Ted Bernstein; Jill Iantoni; [lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com); [dsimon@stpcorp.com](mailto:dsimon@stpcorp.com)  
**Subject:** Re: Simon Bernstein Trust - Policy #1009208

Is this after you sent the info scooter sent you Robert? Thx

On Mar 14, 2013, at 3:01 PM, Robert Spallina  
<[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:

FYI – this is from legal on the status of their search  
to clear up title on the policy

**From:** Welling, Scott  
**[mailto:[scott.welling@jackson.com](mailto:scott.welling@jackson.com)]**  
**Sent:** Thursday, March 14, 2013 1:10 PM  
**To:** Robert Spallina  
**Subject:** RE: Simon Bernstein Trust - Policy  
#1009208

Hey Bob,

Haven't forgotten about you. Am out tomorrow but  
will touch base early next week. So far we have not  
found much that is helpful.

**From:** Robert Spallina  
**[mailto:[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)]**  
**Sent:** Wednesday, March 06, 2013 5:32 PM  
**To:** Welling, Scott  
**Subject:** Simon Bernstein Trust - Policy #1009208

Scott – I understand you are out of the office until  
tomorrow. We sent this to you previously and in  
error addressed it to the wrong email address. We  
would like to file this on Monday so if you could  
take a few minutes to review it would be greatly  
appreciated. We have not attached a copy of the  
Order but it will obviously be in the form of the  
relief requested.

Thanks,

Robert L. Spallina, Esq.

TESCHER & SPALLINA, P.A.

4855 Technology Way, Suite 720

Boca Raton, Florida 33431

Telephone: 561-997-7008

Facsimile: 561-997-7308

E-mail: [rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at [www.tescherspallina.com](http://www.tescherspallina.com)

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**Robert Spallina**

---

**From:** Robert Spallina  
**Sent:** Tuesday, April 16, 2013 10:43 AM  
**To:** Ted Bernstein  
**Cc:** Donald Tescher  
**Subject:** RE: Simon Bernstein Irv Trust v Heritage Union

Ted - I'm done with this matter. I have bent over backwards for YOU to try to keep things in order out of respect for your father and mother but your family has gotten to the point of completely dysfunctional and I do not need the aggravation in my life. Handle the insurance matter as you please (or as your in-laws please which seems to be the case). I cannot and will not help people that do not want to help themselves. Don is a much more patient man than I so he may continue to assist you but I will not. Sorry.

---

**From:** Adam Simon [mailto:asimon21@att.net]  
**Sent:** Tuesday, April 16, 2013 10:31 AM  
**To:** Robert Spallina  
**Subject:** Re: Simon Bernstein Irv Trust v Heritage Union

That will get you absolutely nowhere SIR.

I will speak to Ted and never to you AGAIN in my life!!

**From:** Robert Spallina <rspallina@tescherspallina.com>  
**To:** adam simon <asimon21@att.net>  
**Cc:** Ted Bernstein <bernstein@lifeinsuranceconcepts.com>; David (Scooter) Simon <dsimon@stacorp.com>; Donald Tescher <dtescher@tescherspallina.com>  
**Sent:** Tuesday, April 16, 2013 9:28 AM  
**Subject:** RE: Simon Bernstein Irv Trust v Heritage Union

Because we are not underhanded disrespectful assholes! You're not really asking that question are you? Please forward me a copy of the withdrawal of your complaint. This is absurd already!

---

**From:** adam simon [mailto:asimon21@att.net]  
**Sent:** Tuesday, April 16, 2013 10:26 AM  
**To:** Robert Spallina  
**Cc:** Ted Bernstein; David (Scooter) Simon; Donald Tescher  
**Subject:** Re: Simon Bernstein Irv Trust v Heritage Union

Mr. Spallina: the reason we filed in Illinois was to make sure this matter got started somewhere. If we dismiss we have no assurance that the matter will be promptly filed in Florida.

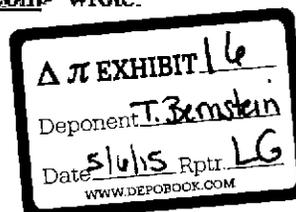
Please explain what prevents Heritage or you from filing in Florida before we dismiss our action in Illinois?

Thank you.

Adam Simon

Sent from my iPhone

On Apr 15, 2013, at 10:53 AM, "Robert Spallina" <rspallina@tescherspallina.com> wrote:



Please advise timing as we have not received a response on the below email.

---

**From:** Robert Spallina  
**Sent:** Friday, April 12, 2013 11:22 AM  
**To:** 'Adam Simon'  
**Cc:** 'Welling, Scott'; 'Ted Bernstein'; David (Scooter) Simon; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - I have spoken to Scott Welling at Jackson (who is copied on this email) and he will interplead here in South Palm Beach County which was the path he and I have been on since we discovered the defect in the ownership change. He is in the process of speaking to counsel here in Palm Beach County. As discussed Monday, please withdraw the pleading filed in Cook County and provide notice of same to all the parties on this email. He cannot file his inter-pleader with this matter pending in Cook County. Thank you

Robert L. Spallina, Esq.  
TESCHER & SPALLINA, P.A.  
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Facsimile: 561-997-7308  
E-mail: [rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)

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---

**From:** Robert Spallina  
**Sent:** Monday, April 08, 2013 1:59 PM  
**To:** 'Adam Simon'  
**Cc:** 'Welling, Scott'; 'Ted Bernstein'; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - we would like an explanation as well. Our client, Ted Bernstein (and the alleged successor trustee of the subject trust), never had a conversation with us that his family would be taking it upon themselves to attempt to collect the proceeds from the carrier through his brother-in-law's firm. We have represented this trust from the date of Mr. Bernstein's death. Is our client even aware that this was filed? He did not sign the pleading. Please advise.

Robert L. Spallina, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, Florida 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
E-mail: [rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)

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---

**From:** Welling, Scott [<mailto:scott.welling@jackson.com>]  
**Sent:** Monday, April 08, 2013 12:47 PM  
**To:** 'Adam Simon'; Robert Spallina  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

I have been working with attorney Robert Spallina to try and amicably resolve this matter.

Who do you represent, and why are you suing us? Have you been apprised of attorney Spallina's efforts to help us resolve this matter?

---

**From:** Adam Simon [<mailto:asimon21@att.net>]  
**Sent:** Monday, April 08, 2013 12:15 PM  
**To:** Welling, Scott  
**Subject:** Simon Bernstein Irrv Trust v Heritage Union

Mr. Welling:

Attached please find a complaint in this matter filed in the Circuit Court of Cook County. My client has attempted to reach you but has been unsuccessful. We remain hopeful that this matter can be resolved quickly. If you have any questions and need to speak with me today, please try my cell phone at 312-320-4491. Thank you.

Adam Simon

**Robert Spallina**

---

**From:** Robert Spallina  
**Sent:** Tuesday, April 16, 2013 10:36 AM  
**To:** 'Adam Simon'; David (Scooter) Simon  
**Cc:** Ted Bernstein; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Problem is that you NEVER did speak with us before you did what you did...shame on you guys!

---

**From:** Adam Simon [mailto:asimon21@att.net]  
**Sent:** Tuesday, April 16, 2013 10:31 AM  
**To:** Robert Spallina  
**Subject:** Re: Simon Bernstein Irrv Trust v Heritage Union

That will get you absolutely nowhere SIR.

I will speak to Ted and never to you AGAIN in my life!!

**From:** Robert Spallina <rspallina@tescherspallina.com>  
**To:** adam simon <asimon21@att.net>  
**Cc:** Ted Bernstein <tbemstein@lifeinsuranceconcepts.com>; David (Scooter) Simon <dsimon@sipccorp.com>; Donald Tescher <dtescher@tescherspallina.com>  
**Sent:** Tuesday, April 16, 2013 9:28 AM  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Because we are not underhanded disrespectful assholes! You're not really asking that question are you? Please forward me a copy of the withdrawal of your complaint. This is absurd already!

---

**From:** adam simon [mailto:asimon21@att.net]  
**Sent:** Tuesday, April 16, 2013 10:26 AM  
**To:** Robert Spallina  
**Cc:** Ted Bernstein; David (Scooter) Simon; Donald Tescher  
**Subject:** Re: Simon Bernstein Irrv Trust v Heritage Union

Mr. Spallina: the reason we filed in Illinois was to make sure this matter got started somewhere. If we dismiss we have no assurance that the matter will be promptly filed in Florida.

Please explain what prevents Heritage or you from filing in Florida before we dismiss our action in Illinois?

Thank you.

Adam Simon

Sent from my iPhone

On Apr 15, 2013, at 10:53 AM, "Robert Spallina" <rspallina@tescherspallina.com> wrote:

Please advise timing as we have not received a response on the below email.

---

**From:** Robert Spallina  
**Sent:** Friday, April 12, 2013 11:22 AM

Bernstein - Life Ins.

**Donald Tescher**

**From:** Donald Tescher  
**Sent:** Friday, April 19, 2013 6:01 PM  
**To:** 'Welling, Scott'; Robert Spallina  
**Cc:** 'asimon21@att.net'; 'David (Scooter) Simon'; Ted Bernstein  
**Subject:** RE: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Ted: This is principally addressed to you but have included others so that they are aware. I feel that we have serious conflicts in continuing to represent you as Trustee of the Life Insurance Trust and need to withdraw from further representation in regard to that matter. We have been under the impression that the interpleader action to be filed in Palm Beach County, Florida would be filed in the Circuit Court which is a State court. That is where Sy's estate is being administered. I have spent the past couple of days acting as an intermediary with Scooter and Scott and thought that we had reached a reasonable resolution that would permit the carrier to bring the action here and have Adam then dismiss the Cook County suit. It appears that I was unsuccessful. Given the conflicting issues of who is representing the Trust, our removal will at least solve that issue. If you gave written authority to the Simon Lawfirm it was without our knowledge.

Should our testimony or affidavits regarding Sy's intent or any other aspects of this matter that we may have knowledge be useful we will certainly be available to assist.

Donald R. Tescher, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
dtescher@tescherspallina.com

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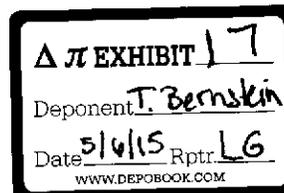
**From:** Welling, Scott [mailto:scott.welling@jackson.com]  
**Sent:** Friday, April 19, 2013 5:26 PM  
**To:** Robert Spallina; Donald Tescher  
**Subject:** FW: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Gentlemen,

Can you advise on the below...?

**From:** adam simon [mailto:asimon21@att.net]

4/19/2013



TS006547

**Sent:** Friday, April 19, 2013 5:25 PM  
**To:** Welling, Scott  
**Subject:** Re: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Mr. Welling:

You have been given inaccurate information. I have received written authorization from Ted Bernstein as Trustee of the Trust to file the action that was filed in Cook County.

Thank you,  
Adam Simon

Sent from my iPhone

On Apr 19, 2013, at 4:02 PM, "Welling, Scott" <[scott.welling@jackson.com](mailto:scott.welling@jackson.com)> wrote:

Dear Mr. Simon,

Thank you for your correspondence.

I just tried to call you, but neither you nor your colleague David Simon were available.

I have briefly discussed this matter with Cook County counsel.

It is my understanding that Jackson has a very short timeframe in which to remove this action to federal court, should it choose to do so. Inasmuch as I am out of the office all next week, I would like to resolve this issue sooner rather than later.

My understanding of this matter is that the Trustee of the Simon Bernstein Irrevocable Insurance Trust has not authorized you to file this lawsuit on behalf of the Trust. Indeed, the Trust's counsel (Robert Spallina) and I have had several amicable and productive dialogues regarding this matter, and have agreed that the best way to resolve this matter is for Jackson to file a federal interpleader action in Palm Beach Florida, where venue indisputably lies.

If I am incorrect, and if the Trustee of the Trust HAS directed you to file this suit, please advise me of same at your soonest convenience.

I will allow you until Wednesday, April 24, 2013 to voluntarily dismiss the above action, and provide me with email confirmation of the dismissal.

If I do not receive confirmation of the dismissal by that date, I will instruct our Cook County counsel to file an Appearance, and then seek to dismiss the action on the grounds that the Trust never authorized the suit.

Naturally, I will ask that our fees and costs be recovered from whichever person or entity is appropriate.

I remain committed to working with the Trust to resolve this matter amicably and with as little expense as possible. However, I decline to do so with an improperly filed lawsuit hanging over my head.

4/19/2013

TS006548

Please give this matter your prompt attention.

**From:** Cheryl Sychowski [<mailto:cheryl@stpcorp.com>]  
**Sent:** Friday, April 19, 2013 3:48 PM  
**To:** Welling, Scott  
**Cc:** [dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com); Adam Simon; Adam Simon  
**Subject:** Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Mr. Welling,

Please see attached for a letter from Adam Simon regarding Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company - Case Number 2013L003498.

Thank you,

**Cheryl Sychowski**

**The Simon Law Firm**  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601  
P: (312) 819-0730  
F: (312) 819-0773  
E: [cheryl@stpcorp.com](mailto:cheryl@stpcorp.com)

4/19/2013

TS006549

**Robert Spallina**

---

**From:** Donald Tescher  
**Sent:** Friday, August 30, 2013 9:25 AM  
**To:** Ted Bernstein; Pam Simon; Jill Iantoni; Lisa  
**Cc:** Robert Spallina  
**Subject:** Estates and Trusts of Shirley & Simon Bernstein and Related Entities

All -

Sorry for the delay in getting this to you as I had promised when I participated on our recent conference call. It takes me a little longer to turn around matters as I work from Cape Cod in the Summer.

In reviewing our billings to date, which encompass virtually a year, over the year we have billed your father's estate and trust a total of \$105,000 from Sep 2012 thru Aug 2013. For this purpose, the estate and trust includes unreimbursed fees on the Shirley Trust (approximately \$ 15-20K), the 1995 Insurance Trust (approximately \$20-25K) and Bernstein Family Realty, LLC (\$10,000). As a result, our fees on Si's estate and trust matters over the last year have been approximately \$50K-\$60K. In that regard we have opened the estate and filed the relevant documents, have consulted and met with outside counsel on the Stansbury litigation (and Eliot matters) and on another claim in litigation, dealt with Eliot and his counsel on all of his matters, worked with the accountants on tax return matters and related items, worked with JP Morgan on the asset management and loan matters, dealt with creditor issues, dealt with appraisers and potential purchaser of the jewelry, and communicated with Ted on a very regular basis as liaison for all of you in addition to our conference calls and individual calls over the last year. Unfortunately, your father's affairs were not left in the best order and the business litigation has spilled over to the trusts and estate making normal administration more difficult. Furthermore, his decision to by-pass you children in favor of his grandchildren has exasperated the issues in trying to deal with Eliot which has become a continuing, ongoing process with no resolution in site. I believe that we have adequately expressed our concerns in this regard to you.

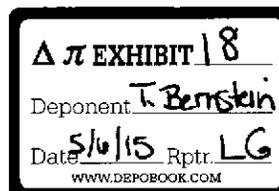
As we discussed, under normal circumstances the Shirley Trust assets would have already been distributed to the Grandchildren's Trusts created under Si's Trust (based upon the exercise of his power of appointment under his will) but for the fact that the Shirley Trust is still a party in the Stansbury litigation and as to distributions to trusts for Eliot's children, we have advised Ted that the trustee of those trusts needs to sign off on a Receipt, Release and Refunding Agreement (or alternatively, Ted needs to prepare a formal accounting and serve it on all to commence the running of the 6 month statute of limitations to cut off a beneficiary's right to sue him).

It is not our usual practice to serve as fiduciaries for our clients; however, in certain limited situations we have undertaken that role. Under the Florida Statutes, an attorney serving as a Personal Representative or Trustee can be compensated for both legal and fiduciary fees. We have not, nor do we intend to bill for Personal Representative fees or Trustee fees and have been conservative in our billing of the estate out of respect for your parents with whom we enjoyed a very nice relationship, and have attempted to minimize duplication of Robert's and my time. At the appropriate time we will provide a complete accounting of our fees and all estate expenses to date.

Having said that, we need to reign your brother in before he single handedly depletes the estate and trust assets with all of his nonsense. The amount of time, energy and effort that he is expending and the lies he is telling are incredible. We don't necessarily have an answer for this yet but we hope that somehow that one or more of you is able to reason with him and put an end to this. Your parents would certainly not appreciate the mockery he has made of their estates.

Again, sorry for the delay in getting this information to you. Going forward we will provide you with monthly bills so there is no further misunderstanding and better transparency.

Donald R. Tescher, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561-997-7908  
Facsimile: 561-997-7306  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE )  
INSURANCE TRUST DTD 6/21/95, )  
by Ted S. Bernstein, its Trustee, Ted S. )  
Bernstein, an individual, )  
Pamela B. Simon, an individual, )  
Jill Iantoni, an individual and Lisa S. )  
Friedstein, an individual. )

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

----- )  
HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff )

v. )

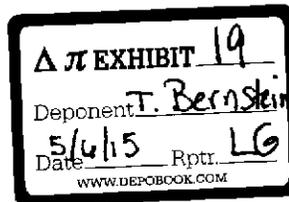
SIMON BERNSTEIN IRREVOCABLE )  
TRUST DTD 6/21/95 )

Counter-Defendant )

and, )

FIRST ARLINGTON NATIONAL BANK )  
as Trustee of S.B. Lexington, Inc. Employee )  
Death Benefit Trust, UNITED BANK OF )  
ILLINOIS, BANK OF AMERICA, )  
Successor in interest to LaSalle National )  
Trust, N.A., SIMON BERNSTEIN TRUST, )  
N.A., TED BERNSTEIN, individually and )  
as purported Trustee of the Simon Bernstein )

Case No. 13 cv 3643  
Honorable John Robert Blakey  
Magistrate Mary M. Rowland



Irrevocable Insurance Trust Dtd 6/21/95, )  
and ELIOT BERNSTEIN )

Third-Party Defendants. )

ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

v. )

TED BERNSTEIN, individually and )  
as alleged Trustee of the Simon Bernstein )  
Irrevocable Insurance Trust Dtd, 6/21/95 )

Cross-Defendant )

and, )

PAMELA B. SIMON, DAVID B.SIMON, )  
both Professionally and Personally )

ADAM SIMON, both Professionally and )  
Personally, THE SIMON LAW FIRM, )

TESCHER & SPALLINA, P.A., )

DONALD TESCHER, both Professionally )  
and Personally, ROBERT SPALLINA, )

both Professionally and Personally, )

LISA FRIEDSTEIN, JILL IANTONI )

S.B. LEXINGTON, INC. EMPLOYEE )

DEATH BENEFIT TRUST, S.T.P. )

ENTERPRISES, INC. S.B. LEXINGTON, )

INC., NATIONAL SERVICE )

ASSOCIATION (OF FLORIDA), )

NATIONAL SERVICE ASSOCIATION )

(OF ILLINOIS) AND JOHN AND JANE )

DOES )

Third-Party Defendants. )

**AFFIDAVIT OF TED BERNSTEIN**

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I, Ted Bernstein, being duly sworn under oath, deposes and states as follows:

1. I am a resident of the City of Boca Raton, County of Palm Beach, State of Florida and am over the age of 18. If I were called and sworn as a witness in the above-captioned matter I could competently and voluntarily testify to the facts set forth in this Affidavit based upon my personal knowledge.
2. My legal name is Ted Stuart Bernstein. I most often go by the name Ted Bernstein. I am also known as Ted S. Bernstein. I have also been referred to by the nickname "Theo" by friends and family.
3. I have been employed in the life insurance industry since 1980. I have been a licensed life insurance agent in Illinois since at least 1980, and in Florida since 2000.
4. When I use the term "Affidavit of Don Sanders" I mean that certain affidavit executed by Don Sanders, Assistant Vice President of Operations for Jackson National Life Insurance Company on April 8, 2014.
5. When I use the term "Capitol Bankers", I mean Capitol Bankers Life Insurance Company.
6. When I use the term "Consenting Children", I mean collectively four of the five adult children of Simon Bernstein, whom are Ted Bernstein, Pamela Simon, Jill Iantoni, and Lisa Friedstein.
7. When I use the term "Heritage", I mean Heritage Union Life Insurance Company.
8. When I use the term "Jackson", I mean Jackson National Life Insurance Company.
9. When I use the term "Insurer", I mean the life insurance company that was the insurer on the risk for the Policy, which started as Capitol Bankers but changed through succession from time to time.
10. When I use the term "Policy", I mean Capitol Bankers Life Insurance Policy No. 1009208 insuring the life of Simon Bernstein.
11. When I use the term "Insured", I mean Simon Bernstein.
12. When I use the term "Owner", I mean the owner of the Policy as reflected on the Insurers' records from time to time.

13. When I use the term "Policy Proceeds", I mean the amount that was payable by the Insurer under the Policy upon the death of the insured.
14. When I use the term "Proceeds on Deposit", I mean the amount that was actually deposited by the Insurer with the Registry of the Court pursuant to the Insurers' Complaint for Interpleader.
15. When I use the term "Policy Records", I mean the records of the Insurer relating to the Policy as produced by the Insurer during the Litigation.
16. When I use the term "Litigation", I mean the above-captioned litigation.
17. When I use the term "VEBA", I am referring to the S.B. Lexington Employee Death Benefit Trust.
18. I am currently employed as President of Life Insurance Concepts, Inc. ("LIC"), a life insurance brokerage based in Boca Raton, FL.
19. I have been employed by LIC (or its predecessor) for the past 15 years, and have been employed in the life insurance industry for approximately 30 years.
20. From 2001 to 2012, my father, Simon Bernstein and I worked together at LIC, and shared office space in Boca Raton, FL.
21. Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 ("Bernstein Trust"), is an irrevocable life insurance trust formed in Illinois as further described below. The Bernstein Trust is the original Plaintiff that first filed this action in the Circuit Court of Cook County. The Insurer then filed a notice of removal to the Northern District of Illinois. The Bernstein Trust has also been named as a Counter-defendant to the EB Claims. The Bernstein Trust is represented by counsel, Adam M. Simon.
22. Bank of America, N.A. ("Bank of America"), was named a party by virtue of Heritage's counterclaim for Interpleader. Bank of America was terminated as a co-Plaintiff on January 13, 2014, and the Insurer voluntarily dismissed Bank of America as a Third-Party Defendant on February 14, 2014.
23. Eliot Bernstein ("Eliot") was named a Party by virtue of Heritage's counterclaim for Interpleader, and Eliot filed third-party claims against several Parties described herein making Eliot a Third-Party Plaintiff as well. Eliot is the third adult child of Simon Bernstein. Eliot is representing himself, and/or his children, pro se in this matter.

24. United Bank of Illinois, was named as a Third-Party Defendant in Heritage's counterclaim for Interpleader. United Bank of Illinois has never filed an appearance or answer.
25. I, Ted Bernstein, as Trustee, of the Bernstein Trust retained Plaintiff's counsel and initiated the filing of this Action. I am is also a co-Plaintiff, individually, and has been named as a Third-Party Defendant to the Eliot's Claims. I am the eldest of the five adult children of Simon Bernstein. I am represented by counsel, Adam M. Simon.
26. First Arlington National Bank was named as a Third-Party Defendant by virtue of Heritage's counterclaim for Interpleader. First Arlington National Bank was never served by Heritage, and instead Heritage served JP Morgan Chase Bank as First Arlington Bank's alleged successor and JPMorgan Chase Bank was substituted as a party in place of First Arlington National Bank on 10/16/2013. (See ¶31 below).
27. Lisa Sue Friedstein is a co-Plaintiff and has been named as a Third-Party Defendant to the Eliot's Claims. Lisa Sue Friedstein is the fifth adult child of Simon Bernstein. Lisa Sue Friedstein is represented by counsel, Adam M. Simon.
28. Jill Marla Iantoni is a co-Plaintiff and has been named as a Third-Party Defendant to Eliot's Claims. Jill Marla Iantoni is the fourth adult child of Simon Bernstein. Jill Marla Iantoni is represented by counsel, Adam M. Simon.
29. Pamela Beth Simon is a co-Plaintiff and has been named as a Third-Party Defendant to the EB Claims. Pamela Beth Simon is the second adult child of Simon Bernstein. Pamela Beth Simon is represented by counsel, Adam M. Simon.
30. Heritage is an Insurer as defined above. Heritage was terminated as a party on 2/18/2014 when the court granted Heritage's motion to dismiss itself from the Interpleader litigation after having deposited the Policy Proceeds with the Registry of the Court.
31. J.P. Morgan Chase Bank, N.A., ("J.P. Morgan") was named as a Third-Party Defendant by virtue of Heritage's counterclaim for Interpleader. In its claim for Interpleader, Heritage named J.P. Morgan Chase Bank, N.A., as a successor to First Arlington National Bank (described above). J.P. Morgan Chase Bank, N.A. filed an answer to Heritage's counterclaim for Interpleader in which it disclaimed any interest in the Policy Proceeds. J.P. Morgan then filed a motion for judgment on the pleadings to have itself dismissed from the litigation as party and the court granted the motion. As a result, J.P. Morgan was terminated as a party on March 12, 2014.

32. William Stansbury filed a motion to intervene in this action, but his Motion to Intervene was denied and he was terminated as a non-party intervenor on January 14, 2014.
33. Adam M. Simon is counsel for the Bernstein Trust and the Consenting Children as defined below. Adam M. Simon is not counsel for Eliot Bernstein whom has chosen to represent himself Pro Se in this matter. Adam M. Simon was named a Third-Party Defendant to Eliot's Claims, and represents himself with regard to Eliot's claims. Adam M. Simon is the brother-in-law of Pamela Beth Simon, and the brother of David B. Simon.
34. National Service Association, Inc. (of Illinois) was a corporation owned by the decedent, Simon Bernstein and was named a Third-Party Defendant to Eliot's Claims. According to the public records of the Secretary of State of Illinois, National Service Association, Inc. (of Illinois) was dissolved in October of 2006. (*See Ex. 21*)
35. Donald R. Tescher, Esq. was named a Third-Party Defendant by virtue of the EB Claims. Donald R. Tescher is a partner of in the firm of Tescher & Spallina, P.A. Donald R. Tescher was terminated as a party to this matter when the court granted his motion to dismiss as to Eliot's Claims on March 17, 2014.
36. Tescher and Spallina, P.A. is a law firm whose principal offices are in Palm Beach County, FL. Tescher and Spallina, P.A. was named a Third-Party Defendant to Eliot's Claims. Tescher & Spallina, P.A. Donald R. Tescher was terminated as a party to this matter when the court granted his motion to dismiss as to the Eliot's Claims on March 17, 2014.
37. The Simon Law Firm was named a Third-Party Defendant to Eliot's Claims. The Simon Law Firm is being represented by counsel, Adam M. Simon.
38. David B. Simon is the husband of Pamela Beth Simon, and the brother of counsel, Adam M. Simon and was named a Third-Party Defendant to Eliot's Claims. David B. Simon is being represented by counsel, Adam M. Simon.
39. S.B. Lexington, Inc. was a corporation formed by Simon Bernstein. According to the records of the Secretary of State of Illinois, S.B. Lexington, Inc. was voluntarily dissolved on April 3, 1998. (*See Ex. 9*).

40. S.B. Lexington, Inc. Employee Death Benefit Trust (the "VEBA Trust") was named a Third-Party Defendant to Eliot's Claims, and was a Trust formed by Simon Bernstein in his role as principal of S.B. Lexington, Inc. The VEBA Trust was formed pursuant to I.R.S. Code Sec. 501(c)(9) as a qualified Employee Benefit Plan designed to provide a death benefit to certain key employees of S.B. Lexington, Inc. The VEBA was dissolved in 1998 upon dissolution of S.B. Lexington, Inc.
41. Robert Spallina, Esq. was named a Third-Party Defendant to Eliot's Claims. Robert Spallina is a partner of in the firm of Tescher & Spallina, P.A. Robert Spallina was terminated as a party to this matter when the court granted his motion to dismiss as to Eliot's Claims on March 17, 2014.
42. National Service Association, Inc. (Florida) was named a Third-Party Defendant to Eliot's Claims. According to the records of the Secretary of State of Florida, National Service Association, Inc. (Florida) was a Florida corporation and was dissolved in 2012. (See Ex. 22)
43. Benjamin Brown as Curator of The Estate of Simon Bernstein filed a motion to intervene in this litigation. The court granted the motion to intervene on July 28, 2014, and as a result the Estate became a third-party claimant in the litigation.
44. Subsequently, Brian O'Connell as successor Curator and Administrator Ad Litem of the Estate of Simon Bernstein filed a motion to substitute for Benjamin Brown, and the court granted the motion November 3, 2014.
45. According to the Policy Records, the Policy was issued by Capitol Bankers in 1982. I have reviewed and made myself familiar with the Policy Records which start with bates no. JCK000001 and end at bates no. JCK001324.
46. I have also reviewed and made myself familiar with Plaintiff's document production made pursuant to Fed. R. Civ. P. 26. A true, accurate and complete set of copies of those documents were served upon the other parties to this Litigation and were stamped with bates no. BT000001-BT000112.
47. Following the death of Simon Bernstein, I participated in and conducted diligent searches of Simon Bernstein's home, office and condominium all located in Palm Beach County, Florida. All of the records I located pertaining to the Policy and/or Bernstein Trust were turned over to Simon Bernstein's attorneys, whose names are Robert Spallina and Donald Tescher.
48. I am aware that the documents produced by Plaintiffs in this matter also contain documents located by David Simon and Pamela Simon in their offices in Chicago, Illinois.

49. As of the date of this Affidavit, no documents that I am aware of have been located and/or produced in this Litigation by any Party that appear to be the original Policy contract.
50. As of the date of this Affidavit, no documents that I am aware of have been produced in this Litigation by any Party that appear to be executed originals or executed copies of:
- (a) the "S.B. Lexington Employee Death Benefit Trust"; or
  - (b) the "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995", or
  - (c) any purported trust named the "Simon Bernstein Trust, N.A."
51. From my review of the records, on the date of issuance the sum insured (or death benefit) of the Policy was \$2 million. (See Ex. 5 at Schedule Page, bates no. JCK001021).
52. The Insurer produced a document that is titled "Financial Activity from Issue" and references the Policy number. (See Ex. 1.)
53. The financial activity report produced by Insurer indicates that the amount of the Policy Proceeds at the time of the Insured's death was \$1,689,070.00. (See Ex. 1, at bates no. JCK0010201).
54. Plaintiffs have submitted a copy of the receipt from the Registry of the Court for the Northern District of Illinois (the "Registry") which reflects a deposit of the Policy Proceeds, a total of \$1,703,567.09 deposited by the Insurer on June 26, 2013. (See Ex. 2).
55. According to the receipt, this deposit represented the Policy Proceeds of \$1,689,070.00, less a deduction for a policy loan, plus interest paid from the date of Simon Bernstein's death until the date of deposit with the Registry. I concur with the calculation of the Policy Proceeds and that the amount reflected on the receipt evidences the Insurers payment of the Policy proceeds pursuant to its Interpleader Action. (See Ex. 2)
56. According to the Part I of the application for the Policy, the Policy Owner at issuance was "First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust". (See Ex. 3)
57. According to Part I of the application, the beneficiary at issuance was designated as follows: "First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust". (See Ex. 3)
58. According to Part I of the application, Simon Bernstein's employer at the time of issuance was S.B. Lexington, Inc. and his title was listed as Chairman of the Board. (See Ex. 3)

59. During the application process, the Insurer conducted a routine underwriting investigation of Simon Bernstein prior to approving his policy. Part of that investigation was conducted by a company called Equifax, which is a company widely used in the insurance industry for underwriting investigations. In the Equifax report, the purpose of the insurance being provided by the Policy was stated as follows: "The beneficiary of this policy is the First Arlington National Bank, trustee of the S.B. Lexington, Inc. employee death benefit trust. The insurance will be paid to the trust, and the trust will determine the manner in which the benefits are to be paid and to whom it will be paid. Normally, benefits are paid to family members." (See Ex. 20)
60. In 1982, the year the Policy was issued, I shared office space with Simon Bernstein in Chicago, IL and can confirm that at that time, Simon Bernstein was employed by S.B. Lexington, Inc., which was a life insurance brokerage located in Chicago, IL.
61. In the early 1980's, while I was sharing office space with Simon Bernstein and S.B. Lexington, Inc., I was a licensed insurance agent and participated in the marketing of qualified employee benefit plans for closely held corporations. The plans were qualified as Voluntary Employee Benefit Associations under I.R.S. Code Sec. 501(c)(9). The S.B. Lexington VEBA was designed to insure the lives of S.B. Lexington employees and the ultimate beneficiaries of the death benefit was each insured employee's designated beneficiary.
62. Simon Bernstein whom was also a licensed insurance agent also marketed the VEBA Plans on behalf of S.B. Lexington, Inc.
63. In my experience as an insurance agent, and more specifically in my experience with the sales of life insurance policies issued through a Voluntary Employee Benefit Association, the original of the life insurance policy would be delivered by the insurer to the insurance agent whom would then deliver it to the policy to the owner of the policy as listed on the application. On the application, the initial owner was listed as First Arlington National Bank as Trustee for the S.B. Lexington Employee Death Benefit Trust.
64. In late 1982, First Arlington National Bank was located in Arlington Heights, Illinois. First Arlington National Bank was the Trustee of the VEBA and was thus acting on behalf of the VEBA as Owner of the Policy. In my experience the insurer would have delivered the original Policy to the agent whom would then deliver the Policy to the original Owner. The agent whom signed the application for the Policy was my father Simon Bernstein whose offices were located in Chicago, Illinois. The delivery of the Policy to the Owner would have occurred in Arlington Heights, Illinois.

65. A document produced by Plaintiffs is a copy of a form entitled S.B. Lexington, Inc. Employee Death Benefit Plan and Trust Beneficiary Designation for plan member, Simon Bernstein (the "VEBA Beneficiary Designation"). (See Ex. 4)
66. Having worked for my father and with my father for many years, I have seen his signature on a multitude of occasions and am very familiar with it. I recognize the two signatures on Ex. 4 as the signatures of my father, Simon Bernstein.
67. The VEBA Beneficiary Designation form is dated "8-26-95", and in it Simon Bernstein designates the "Simon Bernstein Irrevocable Insurance Trust" as his beneficiary to receive the death benefit under the VEBA. (See Ex. 4)
68. A document bearing bates no. JCK1098-JCK1117 produced by the Insurer is a specimen policy form for the Policy. On page JCK001099, the specimen policy includes the product name "CURRENT VALUE LIFE". A document produced by the Insurer bearing bates no. JCK001021 is a copy of the Schedule Page that was included with the Policy. The Schedule Page indicates the Policy was a "Current Value Life" plan issued on December 27, 1982, insuring the life of Simon Bernstein with a "sum insured" of \$2 million. (See Ex. 5).
69. A document produced by the Insurer bearing bates no. JCK001023 through JCK001024 is a copy of a Current Value Life, Statement of Policy Cost and Benefit Information which is an illustration of projected values and benefits of the Policy. This Statement of Policy Cost and Benefit Information indicates on its face that it was produced on the issue date of the Policy, December 27, 1982. (See Ex. 6).
70. On or about June 5, 1992, a letter was submitted on behalf of the Policy Owner informing the Insurer that LaSalle National Trust was being appointed as successor trustee. On June 17, 1992, the Insurer acknowledged the change of ownership and designated the Policy Owner on its records as LaSalle National Trust, N.A., as Successor Trustee. (See Ex. 7).
71. The Policy records indicate that on or about November 27, 1995, Capitol Bankers received a "Request Letter" signed by LaSalle National Trust, N.A. in their capacity as Trustee, as Policy Owner, and the Request Letter contained the following requested changes to the Policy:
  - (a) LaSalle National Trust, N.A. as Trustee was designated as the primary beneficiary of the Policy; and
  - (b) The Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995 was designated as the contingent beneficiary. (See Ex. 8)

72. Though the name of the Trust on the Request Letter was set forth as stated in Par. 69(b) above, it was apparently abbreviated upon input into the Insurer's systems as Simon Bernstein Ins. Trust Dated 6/21/95. (See Ex. 8)
73. On November 27, 1995, Capitol Bankers sent correspondence to LaSalle National Trust N.A., as Successor Trustee acknowledging the changes in beneficiaries. (See Ex. 8)
74. On April 3, 1998, S.B. Lexington was voluntarily dissolved. (See Ex. 9)
75. Upon the dissolution of S.B. Lexington, Inc., the VEBA was also dissolved and the ownership of the Policy was changed in April of 1998. According to the Policy Records and the Aff. of Don Sanders, in April of 1998, LaSalle National Trust, as successor Trustee submitted a change of owner which designated Simon Bernstein as the Owner of the Policy. (See Aff. of Don Sanders at ¶61 and Ex. 10)
76. After reviewing the Policy Records, and the Affidavit of Don Sanders, I concur with Don Sanders that on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, the primary beneficiary was designated as LaSalle National Trust, N.A. as Successor Trustee, and the Contingent Beneficiary was designated as Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995. (See Ex. 8 and Aff. of Don Sanders, ¶56)
77. According to the Insurer's pleading of its Interpleader Action, following the death of Simon Bernstein, the Insurer received conflicting claims to the death benefit proceeds. The Insurer received claims on behalf of the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 and a conflicting claim in the form of a letter from Eliot Bernstein. (See Ex. 25 at p. 3)
78. Eliot Bernstein's wife is named Candice Bernstein, and they have three children named Joshua Bernstein, Jacob Bernstein, and Daniel Bernstein.
79. According to the Policy Records and Aff. of Don Sanders, no one named Eliot Bernstein was ever designated as a primary or contingent beneficiary of the Policy. (Aff. of Don Sanders at ¶65)
80. According to the Policy Records and Aff. of Don Sanders, no one named Joshua Bernstein was ever designated as a primary or contingent beneficiary of the Policy. (Aff. of Don Sanders at ¶66)
81. According to the Policy Records and Aff. of Don Sanders, no one named Jacob Bernstein was ever designated as a primary or contingent beneficiary of the Policy. (Aff. of Don Sanders at ¶67)

82. According to the Policy Records and Aff. of Don Sanders, no one named Daniel Bernstein was ever designated as a primary or contingent beneficiary of the Policy. (Aff. of Don Sanders at ¶68)
83. According to the Policy Records and Aff. of Don Sanders, no Owner of the Policy ever submitted a beneficiary designation which designated Simon Bernstein Trust, N.A. as a beneficiary of the Policy. (Aff. of Don Sanders at ¶69).
84. According to the Policy Records, no Owner of the Policy ever submitted a beneficiary designation which designated "Simon Bernstein's estate", "the Estate of Simon Bernstein" or "the Estate" as beneficiary.
85. The last beneficiary designation submitted by the Policy Owner and acknowledged by the Insurer prior to the death of the Insured is Bates No. JCK000370. The primary beneficiary designation is "LaSalle National Trust, N.A., Trustee", and the contingent beneficiary is "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995". (See Aff. of Don Sanders at ¶72 and Ex. 8 all 4 pages).
86. According to the Policy Records, the last change of Owner submitted on the Policy prior to the death of the insured was on or about April 3, 1998. (See Aff. of Don Sanders and Ex. 11).
87. According to the Policy Records and the Aff. of Don Sanders, the Insurer received no notices of claims from any of the following individuals or entities:
- a) The VEBA;
  - b) Any of the Bank Trustees of the VEBA;
  - c) Adam Simon;
  - d) David Simon;
  - e) The Simon Law Firm ; or
  - f) STP Enterprises, Inc.
- (See Aff. of Don Sanders at ¶77).
88. In 1995, I was sharing office space with Simon Bernstein in Chicago, IL. My sister, Pam Simon, and brother-in-law, David Simon also shared office space with us. In the summer of 1995, Simon Bernstein discussed with me that he was forming a life insurance trust for the Policy, and that I would be named one of the trustees for the life insurance trust. He also indicated that my mother, Shirley Bernstein would be named the initial trustee.

89. Prior to Shirley Bernstein's passing on December 8, 2010, I had never been asked to exercise any powers on behalf of the Bernstein Trust as Trustee, and I believed that Shirley Bernstein was then acting as Trustee.
90. My father, Simon Bernstein, passed away less than two years after my mother, and during that time prior to Simon Bernstein's passing, I was not asked or required to exercise any powers as Trustee of the Bernstein Trust.
91. A copy of the Death Certificate of Simon Bernstein is attached hereto. (*See Ex. 12*).
92. In 2011, the Policy lapsed due to a missed premium payment.
93. In 2011, I assisted my father with completing the necessary paperwork and underwriting required by the Insurer to reinstate the Policy. (*See Ex. 13*).
94. Approximately one year before his death, my father took the necessary administrative steps and paid the required premium, and the Policy was reinstated by the Insurer. (*See Ex. 14*).
95. During the reinstatement process in 2011, my father reinstated the Policy without making any changes to the Owner and Beneficiary of the Policy.
96. On or about July 25, 2012, my father executed his last Will which has been filed and is being administered in Probate Court in Palm Beach County, Florida. A true and accurate copy of the Will as filed with the Clerk of the Court in Palm Beach County is included in Movant's Appendix to its Statement of Undisputed Facts. In his Will at ¶9, Simon Bernstein expressly reaffirmed his beneficiary designations made under any insurance contract. (*See Ex. 24 at ¶9*).
97. Following the death of my father, my sister, Pamela Simon, and brother-in-law, David Simon conducted searches of their office files and records, and David Simon located two unexecuted drafts of the Bernstein Trust in their offices. One of the unexecuted drafts was found on David Simon's computer database which dates back to 1990's when David Simon, Pamela Simon, and Simon Bernstein shared office space in Chicago, Illinois. *Ex. 15* includes a printout of metadata from the computer file for this draft of the Bernstein Trust indicating it was last modified on June 21, 1995. (*See Ex. 15 and Aff. of D. Simon*).
98. A second draft of the Bernstein Trust was located as a hard copy inside a file folder within the stored files of David Simon. (*See Ex. 16 and Aff. of D. Simon*).

99. According to the drafts of the Bernstein Trust, and the facts surrounding the execution of the Bernstein Trust by Simon Bernstein, as told to me by David Simon, I was appointed as successor trustee of the Bernstein Trust. (See Ex. 15, and Ex. 16, and Aff. of D. Simon.)

100. I am willing and competent and have been acting as Trustee of the Bernstein Trust in accordance with the intent of the Grantor, Simon Bernstein and with the authorization and consent of the Consenting Children.

101. Both drafts of the Bernstein Trust at Article Seven have virtually identical provisions regarding the distribution of the Policy Proceeds upon the death of Simon Bernstein. Both drafts of the Bernstein Trust provide as follows: "Upon my death, the Trustee shall divide the property of the Trust into as many separate Trusts as there are children of mine who survived me and children of mine who predecease me leaving descendants who survive me. These trusts shall be designated respectively by the names of my children." One of the drafts goes on to identify the five children by name. (See Ex. 15 and Ex. 16 at Article Seven)

102. Simon Bernstein had five children, and all of them survived him. The five adult children of Simon Bernstein are Ted Bernstein, Pamela Simon, Eliot Bernstein, Jill Iantoni and Lisa Friedstein.

103. The Five Children had a total of ten children, and as a result Simon Bernstein had ten grandchildren whose names, year of birth, and parent are as follows:

		<u>D.O.B.</u>	<u>PARENT</u>
i)	Alexandra Bernstein	1988	Ted
ii)	Eric Bernstein	1989	Ted
iii)	Molly Simon	1990	Pam
iv)	Michael Bernstein	1992	Ted
v)	Max Friedstein	1996	Lisa
vi)	Joshua Bernstein	1997	Eliot
vii)	Carly Friedstein	1998	Lisa
viii)	Jacob Bernstein	1999	Eliot
ix)	Julia Iantoni	2001	Jill
x)	Daniel Bernstein	2002	Eliot

104. In the draft of the Bernstein Trust attached hereto as Ex. 15, at Article Eight, the Five Children are each identified by name. None of the ten grandchildren's names appear in the document.

105. I have attached a diagram that illustrates Simon Bernstein's intention and plan to ensure that the Policy Proceeds were ultimately for the benefit of the Bernstein Trust. The diagram (Ex. 17) illustrates that in Option A had the Primary Beneficiary continued to exist at the time of Simon Bernstein's death, then by virtue of the VEBA Beneficiary Designation Simon Bernstein executed which named the Bernstein Trust as beneficiary of the VEBA Trust (Ex. 4), the Policy proceeds would have been paid from the Insurer to the VEBA Trust and distributed by the VEBA Trustee to the Bernstein Trust. (See Ex. 17)

106. In this case, as explained in ¶71 and ¶72 above, the VEBA ceased to exist in 1998, long before Simon Bernstein passed away. As a result there was no primary beneficiary in existence at the time the Insured's death. At the time of Simon Bernstein's death, the contingent beneficiary of the Policy was the Bernstein Trust. By naming the Bernstein Trust as Contingent Beneficiary, Simon Bernstein ensured that the Policy Proceeds would be paid to the Bernstein Trust whether or not the VEBA continued to exist. (See Option B on Ex. 17).

107. In addition to records relating to the Policy at issue, my sister Pamela Simon, located records relating to another life insurance policy issued by Lincoln Benefit Life on the life of Simon Bernstein in 1994 (the "Lincoln Policy"). This Policy was purchased through a life insurance brokerage known as STP Enterprises, Inc. which in the 1990's was co-owned by Simon Bernstein, Pamela Simon and David Simon.

108. This second policy was issued by Lincoln Benefit Life as policy no. U0204204 in June of 1994 with Simon Bernstein as the initial owner and insured (the "Lincoln Policy"). In August of 1995, the ownership of the Lincoln Policy was changed by Simon Bernstein to the Bernstein Trust. The Lincoln Benefit Life policy lapsed several years prior to Simon Bernstein's death. The transfer of ownership form contained the name of the Bernstein Trust and its tax identification number, identified Shirley Bernstein as trustee, and also contains the *witnessed signature* of Simon Bernstein. The Lincoln Policy lapsed in 2006 for non-payment of premium approximately six years prior to my father's passing.

109. The Consenting Children are all in agreement regarding the following facts, and the intent of our father, Simon Bernstein, with regard to the Policy and Policy proceeds:

- a) At the time of Simon Bernstein's death, Simon Bernstein was the owner of the Policy;
- b) In June of 1995, Simon Bernstein formed the Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995;

- c) In November of 1995, the VEBA as Owner submitted a Request to the Insurer designating the VEBA as primary beneficiary, and the Bernstein Trust as second or contingent beneficiary.
- d) In 1998: (i) S.B. Lexington, Inc. was voluntarily dissolved; (ii) the VEBA was terminated and (iii) the VEBA as Owner submitted a change of Owner to the Insurer designating Simon Bernstein as Owner of the Policy.
- e) On the date of Simon Bernstein's death, Simon Bernstein was the Owner of the Policy and the sole surviving beneficiary of the Policy was the contingent beneficiary, the Bernstein Trust;
- f) Following the death of my mother, Shirley Bernstein, and according to the drafts of the Bernstein Trust and the intent of Simon Bernstein, Ted Bernstein was appointed to act as successor Trustee;
- g) Each of the Consenting Children have signified their consent to a court appointment affirming Ted Bernstein's role as Trustee.
- h) The beneficiary of the Policy Proceeds is the Bernstein Trust;
- i) The beneficiaries of the Bernstein Trust are the five adult children--Ted, Pam, Eliot, Jill and Lisa--to share equally, twenty percent each;
- j) The sole asset of the Bernstein Trust is the Policy Proceeds, and the distribution of such proceeds to the five children of Simon Bernstein and any administrative matters related to the termination of the Trust are the only remaining acts required of the Trustee;
- k) The four consenting children of Simon Bernstein agree that upon entry of a judgment in favor of the Plaintiffs declaring that the Bernstein Trust is beneficiary of the Policy Proceeds, counsel for Bernstein Trust, Adam M. Simon, shall be authorized to present the judgment to the Registry and have the Registry distribute the Policy Proceeds in a check payable as follows:  
  
"The Simon Law Firm Client Trust f/b/o Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995";
- l) The Policy Proceeds shall then be deposited to The Simon Law Firm Client Trust Account and shall be disbursed as follows:
  - i) First to the payment of attorney Adam M. Simon's fees and costs;
  - ii) Retention of \$5,000.00 in the Simon Law Client Trust Account for the benefit of the Bernstein Trust in order to pay for any professional

expenses, i.e. accounting or legal, related to the final distribution of the Trust Assets and termination of trust. Any remaining balance after payment of such expenses shall be distributed to the five adult children in equal shares;

- iii) The balance to be split equally among the five adult children of Simon Bernstein;
- iv) Each Beneficiary that receives a share of the Policy proceeds shall execute and deliver to the Trustee (or Adam M. Simon) a receipt for such payment received; and
- v) Along with the distributions, the Trustee shall provide each beneficiary with a final accounting of the distributions made from the Policy Proceeds.

110. Plaintiffs, the Bernstein Trust, Ted Bernstein as Trustee and the Consenting Children submit the following evidence of the existence and terms of the trust:

- a) The SS-4 Form containing the name of the Bernstein Trust, the tax identification number of the Bernstein Trust, and the signature of the initial trustee, Shirley Bernstein. (See Ex. 19);
- b) The VEBA Beneficiary designation form containing the name of the Bernstein Trust and the signature of the grantor, Simon Bernstein. (See Ex. 4);
- c) The Policy beneficiary designation form designating the Bernstein Trust as the contingent beneficiary. (See Ex. 8);
- d) A copy of two unexecuted drafts of the Bernstein Trust Agreement (See Ex. 15 and Ex. 16).
- e) My Affidavit and the Affidavits of David Simon, and each of the four consenting children.
- f) The Affidavit provided by the Insurer, of Don Sanders, also references Policy records that confirm the designation of the Bernstein Trust as contingent beneficiary of the Policy.

g) The Lincoln Benefit Life change of ownership form for the second policy transferring the ownership of the Lincoln Benefit Life policy from Simon Bernstein to the Bernstein Trust. This form contains the name of the Bernstein Trust, identifies Shirley Bernstein as Trustee, and has a *witnessed signature* of Simon Bernstein. (See Ex. 18).

h) The Equifax investigation report from 1982 which indicates that at the time of issuance the benefits of the insurance policy would be paid to the VEBA, and then as stated in the inspection report, "normally those benefits are paid to family members." (See Ex. 20).

111. Plaintiffs submit the following evidence of the terms of the Bernstein Trust, including its designated beneficiaries and trustees:

a) The two unexecuted copies (one of which contains contemporaneous handwritten notes) of the Bernstein Trust Agreement;

b) The Lincoln Benefit Life change of ownership form for the second policy transferring the ownership of the Lincoln Benefit Life policy from Simon Bernstein to the Bernstein Trust. This form contains the name of the Bernstein Trust, identifies Shirley Bernstein as Trustee, and has a *witnessed signature* of Simon Bernstein. (See Ex. 18).

c) The SS-4 Form containing the name of the Bernstein Trust, the tax identification number of the Bernstein Trust, and identifying the initial trustee, Shirley Bernstein. (See Ex. 19);

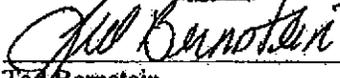
d) Declarations or Affidavits of Ted Bernstein, David Simon, Pam Simon, Jill Iantoni, and Lisa Friedstein.

e) The Equifax investigation report from 1982 which indicates that at the time of issuance the benefits of the insurance policy would be paid to the VEBA, and then as stated in the inspection report of Simon Bernstein, "normally those benefits are paid to family members." (See Ex. 20).

112. I agree to waive and do not claim any compensation for acting as Trustee of the Bernstein Trust, but I do reserve the right to claim reimbursement for any costs I incur such as legal, or accounting fees in connection with the final distribution.

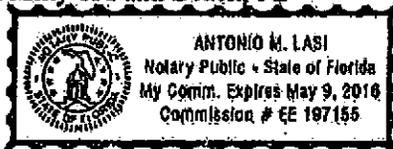
**FURTHER AFFIANT SAYETH NAUGHT.**

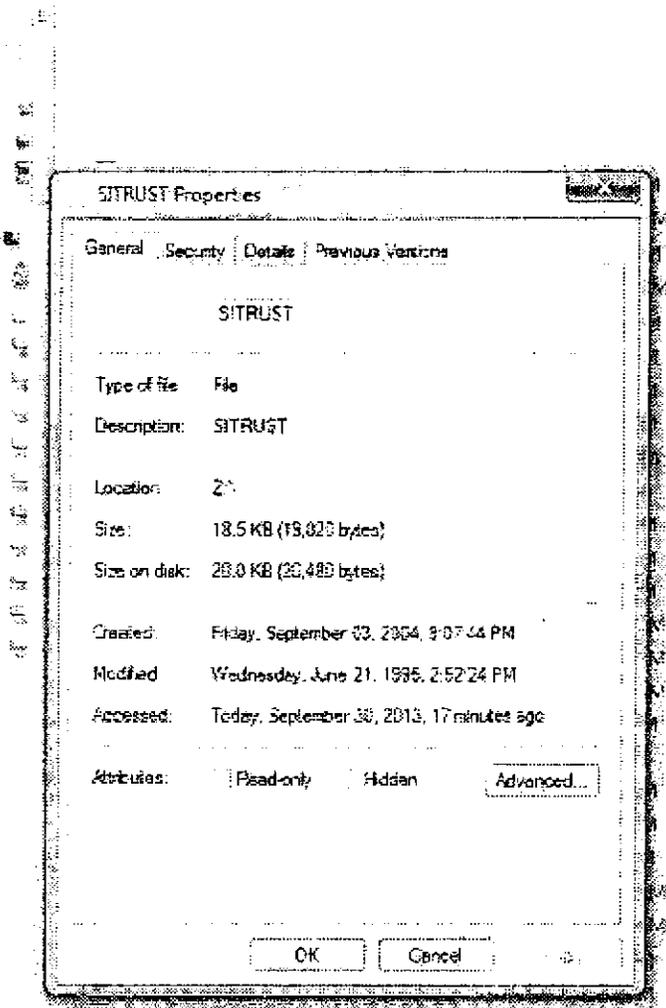
Dated: February 22<sup>th</sup>, 2015

  
\_\_\_\_\_  
Ted Bernstein

SUBSCRIBED AND SWORN TO BEFORE ME  
THIS 22 DAY OF FEBRUARY, 2015.

  
\_\_\_\_\_  
NOTARY PUBLIC  
County of Palm Beach, FL





SITRUST 6/21/1995 2:52 PM File 18 KB

SITRUST Date modified: 6/21/1995 2:52 PM Date created: 9/3/2004 9:07 PM Offline status: Online  
 File Size: 18.5 KB Offline availability: Not available



**Δ π EXHIBIT 21**  
 Deponent: T. Bernstein  
 Date: 5/4/15 Rptr: LG  
 WWW.DEPOBOOK.COM

**BT000002**

IRREVOCABLE TRUST AGREEMENT

I, Simon L. Bernstein, am entering into this Agreement at Boca Raton, Florida on June 1, 1995 with my wife, Shirley Bernstein, as Trustee. I am transferring to the Trustee \$10 and other property and may from time to time again contribute cash or other property to the Trustee. This instrument and the trusts hereby evidenced shall be known as the "Simon Bernstein Irrevocable Insurance Trust, dated June 1, 1995". It is therefore agreed as hereinafter provided.

ARTICLE ONE

1.01 I have caused or will cause the policies of insurance listed in Exhibit A hereto attached to be made payable to the Trustee as Beneficiary hereof. The term "policies" may include annuity contracts, accident policies and any retirement plan or contract under which death benefits can be made payable to the Trustee.

1.02 I or any person may transfer by will or otherwise any other property to the Trustee to be administered as provided in this instrument and may subject the proceeds of any insurance policies to the terms of this instrument by designating the Trustee as beneficiary thereof.

ARTICLE TWO

2.01 This instrument and the Trusts created hereby shall be construed and governed by the laws of Illinois in force from time to time.

**BT000003**

ARTICLE THREE

The Trustee shall pay to me during my life the income of the Trust, and such portions of the principle as I may request from time to time by a written instrument delivered to the Trustee; provided, however, that if I become incapacitated the Trustee shall, as long as such incapacity continues, pay such amounts from the income and from principal as the Trustee may deem necessary for the support and education of the Group consisting of my then living children or their descendants and me. The Trustee may make unequal payments which shall not be considered advancements. Any income not thus paid shall be added to the principal of the Trust.

ARTICLE FOUR

4.01 I reserve during my lifetime all rights under any insurance policies held hereunder including the rights to change the beneficiary, pledge or collect the cash surrender values and to receive all dividends. If any policy is surrendered or if the beneficiary of any policy is changed, this trust shall be revoked with respect to such policy upon acceptance of such surrender or change of beneficiary by the insurance company. During my lifetime the Trustee shall have no responsibility with respect to any policies except to hold any policies received in safekeeping and to deliver them upon my written request.

4.02 Upon being advised of my death the Trustee shall collect the proceeds of any policy(ies) on my life payable to the Trustee and may exercise any available optional method of settlement.

**BT000004**

4.03 Payment to the Trustee shall discharge the liability of the insurance company so paying, which need not see to the application of any payment. The Trustee may compromise claims arising in connection with any policy, and need not engage in litigation to enforce payment without indemnification for any resulting expense.

ARTICLE FIVE

5.01 After my death, the Trustee shall pay such amounts as my personal representative may request in writing for the purpose of paying all or part of the expenses of my funeral, the administration of my estate, my enforceable debts, and federal, state and estate taxes payable by reason of my death.

5.02 In making the payments required under this Article, the Trustee may use proceeds of insurance on my life to the extent other assets are not available but it shall in no event use assets not includable in my gross estate under the Internal Revenue Code.

ARTICLE SIX

6.01 After my death, for purposes of Article Seven, the "Trust Estate" shall consist of the principal together with any accrued and undistributed income of the Trust at the time of my death, plus any property added thereto by my Will or payable to the Trustee by reason of my death, reduced by any gifts herein before made and by the payment of debts admitted and administrative expenses and as provided in Article Five.

ARTICLE SEVEN

7.01 Upon my death, the Trustee shall divide the property

**BT000005**

of the Trust into as many separate Trusts as there are children of mine who survive me and children of mine who predecease me leaving descendants who survive me. These Trusts shall be designated respectively by the names of my children. Each Trust shall be administered and distributed in the following manner:

A) The Trustee shall pay from the net income of each Trust such amounts as the Trustee may deem appropriate to anyone or more persons living from time to time of the Group consisting of the Child for whom the Trust is named, that Child's spouse if any and descendants of such Child, and the spouses of any such descendants. The members of this Group are herein referred to as the Income Beneficiaries. Any income not thus paid shall be added to principal.

B) In addition, the Trustee shall pay from time to time to any one or more of the income beneficiaries of each Trust such amounts from the principal of such Trust as the Trustee may deem necessary for their support and education.

C) The Trustee may make unequal payments of income or principal which shall not be considered advancements.

#### ARTICLE EIGHT

Whenever the termination of any Trust under this instrument, the Trustee is directed to distribute any share of the Trust, except any distribution pursuant to the exercise of the power of appointment, (to any person who is under the age of twenty-five (25) years or is incapacitated, the Trustee shall hold the share of such person hereinafter called the Beneficiary, in a separate Trust for the following purposes:

A) The Trustee shall pay all the net income to the Beneficiary in such amounts of the principal as the Trustee deems necessary for his support and education; provided however, that if and so long as the Beneficiary has not attained majority or is incapacitated, the Trustee may withhold such amounts of income as the Trustee determines not to be necessary for the support and education of the Beneficiary and any amounts thus withheld shall be added to principal.

**BT000006**

B) After the beneficiary has attained the age of twenty-five (25) years, he may withdraw all of the principal and accumulated net income of such Trust.

As of the date of this Agreement I currently have five children living, namely: Ted S. Bernstein, Pamela B. Simon, Jill Bernstein, Lisa Bernstein Friedstein, and Eliot Bernstein.

#### ARTICLE NINE

For purposes under this instrument:

A) Adoption of a child shall have the same effect as if such child had been born to the adopting parents, but only if such child was a minor at the time of the adoption;

B) The word "spouse" includes a widow or widower.

C) Except where distribution is directed to the "descendants per stirpes" of a person, the word "descendants" includes descendants of every degree, whenever born, whether or not a parent or more remote ancestor of such descendant is living. Where distribution is directed to any person's descendants per stirpes who are living at a designated point of time, the stirpes shall begin with the children of such person, whether or not any child of his is then living. "Descendants of my parents" shall include only descendants of the marriage of such parents.

D) A person shall be considered "incapacitated" (1) if and as long as he is adjudicated disabled because he is unable to manage his estate or financial matters or (2) if two doctors familiar with his physical and mental condition certify to the Trustee in writing that the person is unable to transact ordinary business, and until there is a like certification to the Trustee that such incapacity has ended.

E) Where appropriate, words of the masculine gender include the feminine, the words used in a plural or collective sense include the singular and vice versa.

F) The word "Trustee" includes any successor Trustee or Trustees.

G) Except as otherwise provided in this instrument, income accrued or collected but not distributed at the termination of any beneficial interest hereunder shall be treated as if it had accrued or had

BT000007

collected after the termination of such interest. The Trustee may charge any such income with any accrued taxes, expenses or compensation which it considers proper.

H) In determining what amounts are necessary for the support of any person, the Trustee shall take into account (1) the standard of living to which such person is accustomed; (2) his obligations, if any, to support others; (3) the obligation, if any, and the ability of others to support him; and (4) other income available for his support so far as known to the Trustee

I) Whenever the Trustee deems it to be in the best interests of a beneficiary to whom the Trustee is directed or authorized to pay income or principal, the Trustee may apply such income or principal for the benefit of the beneficiary, or distribute it for the beneficiary's use to anyone with whom the beneficiary is residing, or to his guardian, conservator or near adult relative.

J) In determining whether any testamentary power of appointment has been exercised, the Trustee may rely on an instrument admitted to probate in any jurisdiction as the will on the donee of the power. If the Trustee has no written notice of the existence of such a will within three months after the death of the donee of the power, the Trustee may assume that the donee died intestate. This paragraph shall not limit any right of any person against anyone to whom the Trustee has distributed property in reliance thereon.

K) The term "gross estate" refers to the amount described by this term in the Internal Revenue Code in force from time to time.

L) The word "persons" includes corporations.

M) If any distribution, other than a distribution made pursuant to a power of withdrawal of appointment, is a taxable distribution for generation-skipping tax purposes, the Trustee may, out of the principal of the trust from which the distribution is made, either pay any tax attributable to the distribution or increase the distribution to the extent determined by the Trustee to be sufficient to enable the distributee to pay any such tax. In the event of a taxable termination for generation-skipping tax purposes, the Trustee shall, out of the principal of the Trust or share to which such termination relates, pay any tax attributable to the termination without compensating adjustments.

BT000008

ARTICLE TEN

In addition to the powers from time to time conferred on the Trustee by the Illinois Trusts and Trustees Act, the Trustee shall have the following powers exercisable in the Trustee's discretion except:

A) To charge or not to charge against income an allowance for depreciation;

B) To receive in cash the proceeds of any policies payable to the Trustee;

C) To make secure or unsecured loans of trust funds to my estate;

D) To borrow money from any source, including but not limited to, the banking department of a successor corporate trustee;

E) If at any time after my death the principal of a trust required to be held under the terms of this Agreement is less than \$10,000.00 in value, to distribute the principal and any accrued or undistributed income of the Trust to its income beneficiary, and that Trust shall thereupon terminate, notwithstanding any provisions in this Agreement to the contrary;

F) To purchase insurance policies on my life and as to any insurance policies owned by the Trustee on my life, the Trustee shall have the following additional powers:

1) To continue the policies in force and to pay the premiums thereon out of income and/or principal

2) To obtain the cash surrender value of the policies;

3) To convert the policies to paid-up insurance;

4) To borrow money on the security of the policies for any purpose, including but not limited to, the payment of the premiums thereon, and to mortgage, pledge and assign

**BT000009**

the policies for such purposes;

5) To make the Trustee and Trustee hereunder the beneficiary of the policies and to hold the policy proceeds in Trust hereunder;

6) To exercise any and all options and privileges under the policies; and

7) To deal with the policies in any other way the Trustee deems necessary or advisable for the proper management, investment and distribution of the Trusts;

G) When there is a trust under this Agreement and another trust under this Agreement or under another document, each having the same beneficiary or beneficiaries and terms which are substantially identical as to the distribution of income and principal and the same Inclusion Ration, to transfer all of the assets of such Trust under this Agreement to the Trustee or Trustees of the substantially identical Trust, and thereupon such Trust under this Agreement shall terminate;

H) To maximize the value of the GST Exemption which is available to my estate and to segregate by allocation to a separate Trust all or part of any asset in order to reflect a partial disclaimer or differences in tax attributes, consistent with the rules governing such attributes and considering the differences in such attributes and all other factors the Trustee believes pertinent; and

I) To do all other acts to accomplish the proper management, investment and distribution of the Trusts.

#### ARTICLE ELEVEN

The following provisions shall apply to each trust created by this Agreement:

A) If for any reason Shirley Bernstein does not continue to act as Trustee, David B. Simon is appointed successor Trustee. If for any reason neither of the foregoing individuals nor any successor Trustee appointed as hereinafter provided acts or continues to act as Trustee, a successor Trustee shall be appointed as provided in the Illinois Trusts and Trustees Act and shall be any corporation situated in the United States and authorized under the laws of the United States or of any state thereof to administer Trusts and with capital,

BT000010

surplus and undivided profits of at least fifty million dollars.

B) If any individual Trustee becomes incapable of properly managing his or her affairs, as determined unanimously by the group consisting of his or her physician and my then living and competent children, that determination shall be deemed to constitute his or her resignation as Trustee.

C) The income beneficiaries of the Trusts or, in the case of any legally disabled beneficiary, a living and competent parent or child, or guardian or conservator if the beneficiary has no living and competent parent or child, may at any time approve the Trustee's accounts, with the same effect as if a court having jurisdiction over the Trusts approve the accounts.

**ARTICLE TWELVE**

A. The Trustee need not litigate to collect policy proceeds or other property to which the Trustee may be entitled, unless indemnified to the Trustee's satisfaction against all resulting expense and liability.

B. The trustee's receipt and release shall release and discharge an insurance company or other person for payment made and shall bind every beneficiary of the Trusts.

**ARTICLE THIRTEEN**

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, I and the Trustee have executed this Agreement.

\_\_\_\_\_  
\_\_\_\_\_

Subscribed and Sworn to before  
me this \_\_\_ day of \_\_\_\_\_, 199\_.

**BT000011**

\_\_\_\_\_  
Notary Public

**BT000012**

IRREVOCABLE TRUST AGREEMENT

I, S., am entering into this Agreement at \_\_\_\_\_ on \_\_\_\_\_, 199\_ with my wife, Shirley, as Trustee. I am transferring to the Trustee \$10 and other property and may from time to time again contribute cash or other property to the Trustee. This instrument and the trusts hereby evidenced shall be known as the "S. Irrevocable Insurance Trust, dated \_\_\_\_\_, 199\_". It is therefore agreed as hereinafter provided.

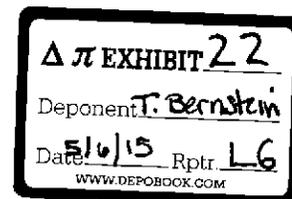
ARTICLE ONE

1.01 I have caused or will cause the policies of insurance listed in Exhibit A hereto attached to be made payable to the Trustee as Beneficiary hereof. The term "policies" may include annuity contracts, accident policies and any retirement plan or contract under which death benefits can be made payable to the Trustee.

1.02 I or any person may transfer by will or otherwise any other property to the Trustee to be administered as provided in this instrument and may subject the proceeds of any insurance policies to the terms of this instrument by designating the Trustee as beneficiary thereof.

ARTICLE TWO

2.01 This instrument and the Trusts created hereby shall be construed and governed by the laws of Illinois in force from time to time.



BT000013

ARTICLE THREE

The Trustee shall pay to me during my life the income of the Trust, and such portions of the principle as I may request from time to time by a written instrument delivered to the Trustee; provided, however, that if I become incapacitated the Trustee shall, as long as such incapacity continues, pay such amounts from the income and from principal as the Trustee may deem necessary for the support and education of the Group consisting of my then living children or their descendants and me. The Trustee may make unequal payments which shall not be considered advancements. Any income not thus paid shall be added to the principal of the Trust.

ARTICLE FOUR

4.01 I reserve during my lifetime all rights under any insurance policies held hereunder including the rights to change the beneficiary, pledge or collect the cash surrender values and to receive all dividends. If any policy is surrendered or if the beneficiary of any policy is changed, this trust shall be revoked with respect to such policy upon acceptance of such surrender or change of beneficiary by the insurance company. During my lifetime the Trustee shall have no responsibility with respect to any policies except to hold any policies received in safekeeping and to deliver them upon my written request.

4.02 Upon being advised of my death the Trustee shall collect the proceeds of any policy(ies) on my life payable to the Trustee and may exercise any available optional method of settlement.

**BT000014**

4.03 Payment to the Trustee shall discharge the liability of the insurance company so paying, which need not see to the application of any payment. The Trustee may compromise claims arising in connection with any policy, and need not engage in litigation to enforce payment without indemnification for any resulting expense.

ARTICLE FIVE

5.01 After my death, the Trustee shall pay such amounts as my personal representative may request in writing for the purpose of paying all or part of the expenses of my funeral, the administration of my estate, my enforceable debts, and federal, state and estate taxes payable by reason of my death.

5.02 In making the payments required under this Article, the Trustee may use proceeds of insurance on my life to the extent other assets are not available but it shall in no event use assets not includable in my gross estate under the Internal Revenue Code.

ARTICLE SIX

6.01 After my death, for purposes of Article Seven, the "Trust Estate" shall consist of the principal together with any accrued and undistributed income of the Trust at the time of my death, plus any property added thereto by my Will or payable to the Trustee by reason of my death, reduced by any gifts herein before made and by the payment of debts admitted and administrative expenses and as provided in Article Five.

ARTICLE SEVEN

7.01 Upon my death, the Trustee shall divide the property

**BT000015**

of the Trust into as many separate Trusts as there are children of mine who survive me and children of mine who predecease me leaving descendants who survive me. These Trusts shall be designated respectively by the names of my children. Each Trust shall be administered and distributed in the following manner:

A) The Trustee shall pay from the net income of each Trust such amounts as the Trustee may deem appropriate to anyone or more persons living from time to time of the Group consisting of the Child for whom the Trust is named, that Child's spouse if any and descendants of such Child, and the spouses of any such descendants. The members of this Group are herein referred to as the Income Beneficiaries. Any income not thus paid shall be added to principal.

B) In addition, the Trustee shall pay from time to time to any one or more of the income beneficiaries of each Trust such amounts from the principal of such Trust as the Trustee may deem necessary for their support and education.

C) The Trustee may make unequal payments of income or principal which shall not be considered advancements.

#### ARTICLE EIGHT

Whenever the termination of any Trust under this instrument, the Trustee is directed to distribute any share of the Trust, except any distribution pursuant to the exercise of the power of appointment, (to any person who is under the age of twenty-five (25) years or is incapacitated, the Trustee shall hold the share of such person hereinafter called the Beneficiary, in a separate Trust for the following purposes:

A) The Trustee shall pay all the net income to the Beneficiary in such amounts of the principal as the Trustee deems necessary for his support and education; provided however, that if and so long as the Beneficiary has not attained majority or is incapacitated, the Trustee may withhold such amounts of income as the Trustee determines not to be necessary for the support and education of the Beneficiary and any amounts thus withheld shall be added to principal.

**BT000016**

B) After the beneficiary has attained the age of twenty-five (25) years, he may withdraw all of the principal and accumulated net income of such Trust.

As of the date of this Agreement I currently have \_\_\_\_\_  
children living, namely:

ARTICLE NINE

For purposes under this instrument:

A) Adoption of a child shall have the same effect as if such child had been born to the adopting parents, but only if such child was a minor at the time of the adoption;

B) The word "spouse" includes a widow or widower.

C) Except where distribution is directed to the "descendants per stirpes" of a person, the word "descendants" includes descendants of every degree, whenever born, whether or not a parent or more remote ancestor of such descendant is living. Where distribution is directed to any person's descendants per stirpes who are living at a designated point of time, the stirpes shall begin with the children of such person, whether or not any child of his is then living. "Descendants of my parents" shall include only descendants of the marriage of such parents.

D) A person shall be considered "incapacitated" (1) if and as long as he is adjudicated disabled because he is unable to manage his estate or financial matters or (2) if two doctors familiar with his physical and mental condition certify to the Trustee in writing that the person is unable to transact ordinary business, and until there is a like certification to the Trustee that such incapacity has ended.

E) Where appropriate, words of the masculine gender include the feminine, the words used in a plural or collective sense include the singular and vice versa.

F) The word "Trustee" includes any successor Trustee or Trustees.

G) Except as otherwise provided in this instrument, income accrued or collected but not distributed at the termination of any beneficial interest hereunder shall be treated as if it had accrued or had collected after the termination of such interest. The Trustee may charge any such income with any accrued

BT000017

taxes, expenses or compensation which it considers proper.

H) In determining what amounts are necessary for the support of any person, the Trustee shall take into account (1) the standard of living to which such person is accustomed; (2) his obligations, if any, to support others; (3) the obligation, if any, and the ability of others to support him; and (4) other income available for his support so far as known to the Trustee

I) Whenever the Trustee deems it to be in the best interests of a beneficiary to whom the Trustee is directed or authorized to pay income or principal, the Trustee may apply such income or principal for the benefit of the beneficiary, or distribute it for the beneficiary's use to anyone with whom the beneficiary is residing, or to his guardian, conservator or near adult relative.

J) In determining whether any testamentary power of appointment has been exercised, the Trustee may rely on an instrument admitted to probate in any jurisdiction as the will on the donee of the power. If the Trustee has no written notice of the existence of such a will within three months after the death of the donee of the power, the Trustee may assume that the donee died intestate. This paragraph shall not limit any right of any person against anyone to whom the Trustee has distributed property in reliance thereon.

K) The term "gross estate" refers to the amount described by this term in the Internal Revenue Code in force from time to time.

L) The word "persons" includes corporations.

M) If any distribution, other than a distribution made pursuant to a power of withdrawal of appointment, is a taxable distribution for generation-skipping tax purposes, the Trustee may, out of the principal of the trust from which the distribution is made, either pay any tax attributable to the distribution or increase the distribution to the extent determined by the Trustee to be sufficient to enable the distributee to pay any such tax. In the event of a taxable termination for generation-skipping tax purposes, the Trustee shall, out of the principal of the Trust or share to which such termination relates, pay any tax attributable to the termination without compensating adjustments.

BT000018

ARTICLE TEN

In addition to the powers from time to time conferred on the Trustee by the Illinois Trusts and Trustees Act, the Trustee shall have the following powers exercisable in the Trustee's discretion except:

A) To charge or not to charge against income an allowance for depreciation;

B) To receive in cash the proceeds of any policies payable to the Trustee;

C) To make secure or unsecured loans of trust funds to my estate;

D) To borrow money from any source, including but not limited to, the banking department of a successor corporate trustee;

E) If at any time after my death the principal of a trust required to be held under the terms of this Agreement is less than \$\_\_\_\_\_ in value, to distribute the principal and any accrued or undistributed income of the Trust to its income beneficiary, and that Trust shall thereupon terminate, notwithstanding any provisions in this Agreement to the contrary;

F) To purchase insurance policies on my life and as to any insurance policies owned by the Trustee on my life, the Trustee shall have the following additional powers:

1) To continue the policies in force and to pay the premiums thereon out of income and/or principal

2) To obtain the cash surrender value of the policies;

3) To convert the policies to paid-up insurance;

4) To borrow money on the security of the policies for any purpose, including but not limited to, the payment of the premiums thereon, and to mortgage, pledge and assign the policies for such purposes;

**BT000019**

5) To make the Trustee and Trustee hereunder the beneficiary of the policies and to hold the policy proceeds in Trust hereunder;

6) To exercise any and all options and privileges under the policies; and

7) To deal with the policies in any other way the Trustee deems necessary or advisable for the proper management, investment and distribution of the Trusts;

G) When there is a trust under this Agreement and another trust under this Agreement or under another document, each having the same beneficiary or beneficiaries and terms which are substantially identical as to the distribution of income and principal and the same Inclusion Ration, to transfer all of the assets of such Trust under this Agreement to the Trustee or Trustees of the substantially identical Trust, and thereupon such Trust under this Agreement shall terminate;

H) To maximize the value of the GST Exemption which is available to my estate and to segregate by allocation to a separate Trust all or part of any asset in order to reflect a partial disclaimer or differences in tax attributes, consistent with the rules governing such attributes and considering the differences in such attributes and all other factors the Trustee believes pertinent; and

I) To do all other acts to accomplish the proper management, investment and distribution of the Trusts.

#### ARTICLE ELEVEN

The following provisions shall apply to each trust created by this Agreement:

A) If for any reason Shelby Daniel, III does not continue to act as Trustee, Ken Fred is appointed successor Trustee. If for any reason neither of the foregoing individuals nor any successor Trustee appointed as hereinafter provided acts or continues to act as Trustee, a successor Trustee shall be appointed as provided in the Illinois Trusts and Trustees Act and shall be any corporation situated in the United States and authorized under the laws of the United States or of any state thereof to administer Trusts and with capital, surplus and undivided profits of at least fifty million dollars.

BT000020

B) If any individual Trustee becomes incapable of properly managing his or her affairs, as determined unanimously by the group consisting of his or her physician and my then living and competent children, that determination shall be deemed to constitute his or her resignation as Trustee.

C) The income beneficiaries of the Trusts or, in the case of any legally disabled beneficiary, a living and competent parent or child, or guardian or conservator if the beneficiary has no living and competent parent or child, may at any time approve the Trustee's accounts, with the same effect as if a court having jurisdiction over the Trusts approve the accounts.

ARTICLE TWELVE

A. The Trustee need not litigate to collect policy proceeds or other property to which the Trustee may be entitled, unless indemnified to the Trustee's satisfaction against all resulting expense and liability.

B. The trustee's receipt and release shall release and discharge an insurance company or other person for payment made and shall bind every beneficiary of the Trusts.

ARTICLE THIRTEEN

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, I and the Trustee have executed this Agreement.

\_\_\_\_\_  
\_\_\_\_\_

Subscribed and Sworn to before  
me this \_\_\_ day of \_\_\_\_\_, 199\_.

\_\_\_\_\_  
Notary Public

SIMON BERNSTEIN  
2000 INSURANCE TRUST

DATED *August 15, 2000*

PROSKAUER ROSE LLP

Attorneys at Law  
2255 Glades Road, Suite 340 West  
Boca Raton, FL 33431-7360

TS003992

**Δ π EXHIBIT 23**  
Deponent *I. Bernstein*  
Date *5/6/15* Rptr. *LG*  
WWW.DEFOBOOK.COM

TRUST AGREEMENT dated this *15* day of *August*,  
2000, between SIMON BERNSTEIN, as Settlor, and SHIRLEY BERNSTEIN  
and ALBERT W. GORTZ, as Trustees.

1. As and for a gift, the Settlor hereby assigns and transfers to the Trustees and their successors (together, the "Trustees") the life insurance policies set forth in Schedule A annexed hereto, and the Settlor agrees to execute all such assignments and changes of beneficiary and to do such other acts and things as may be necessary in order to make the Trustees irrevocable absolute assignees of said life insurance policies. The Trustees shall hold said policies, together with any other property which may be received by them, in trust upon the terms and conditions set forth herein. This trust shall be known as the "SIMON BERNSTEIN 2000 INSURANCE TRUST."

2. (a) During the Settlor's lifetime, the Trustees shall hold the trust property, shall invest and reinvest the same, and shall pay so much of the income therefrom to any one or more of the Settlor's wife, SHIRLEY BERNSTEIN, and the Settlor's descendants, living from time to time, in equal or unequal amounts, and to any one or more of them to the exclusion of the others, as the Trustees, in their absolute discretion, shall determine, accumulating any balance of the income and adding the same to principal.

(b) During the Settlor's lifetime, the Trustees are further authorized and empowered, from time to time, to pay to any one or more of the Settlor's wife, SHIRLEY BERNSTEIN, and the

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2255 GLADES ROAD  
BOCA RATON, FLORIDA 33431

Settlor's descendants, living from time to time, such sums out of the principal of the trust (even to the extent of the whole thereof), in equal or unequal amounts, and to any one or more of them to the exclusion of the others, as the Trustees, in their absolute discretion, shall determine; provided, however, that the Trustees shall notify the Settlor's wife and each of the Settlor's descendants of their intention to make any distribution pursuant to this subdivision, whereupon the Settlor's wife and each of said descendants shall have the right (prior to such distribution) to withdraw principal pursuant to subdivision (c) of this Article 2 within thirty days after receipt of such notice.

(c) In each calendar year (including the year in which the trust is first funded), with respect to any addition to principal,

(1) The Settlor's spouse is authorized and empowered to withdraw from principal the sum of subparagraphs (A) and (B) below, namely:

(A) the lesser of,

(i) an amount equal to the fair market value of the property added to principal (valued as of the date the addition is made),

or,

(ii) an amount that, with respect to the individual making the addition, would qualify for the Federal gift tax annual exclusion under Section 2503(b) of the Code for a gift made directly to the Settlor's spouse (determined on the date the addition is made, after taking into

account all prior gifts to the Settlor's spouse by such individual and assuming that in the case of any such individual other than the Settlor, his or her spouse, if any, will elect to "split" all gifts under Section 2513 of the Code,

and

(B) the amount from prior years (if any) that remains subject to his or her power of withdrawal.

(2) If the aggregate additions to the trust made in said year exceed the amount that the Settlor's spouse may withdraw pursuant to paragraph (1) of this subdivision (c), each of the Settlor's descendants, living from time to time, is authorized and empowered to withdraw from principal the sum of subparagraphs (A) and (B) below, namely:

(A) the lesser of,

(i) an amount equal to,

(I) a) the fair market value of the property added to principal (valued as of the date the addition is made),

reduced by,

b) the amount subject to the power of withdrawal of the Settlor's spouse pursuant to paragraph (1) of this subdivision (c),

divided by,

(II) the number of the Settlor's descendants having a power of withdrawal under this paragraph (2) immediately after the addition is made,

or,

- (ii) an amount that, with respect to the individual making the addition, would qualify for the Federal gift tax annual exclusion under Section 2503(b) of the Code for a gift made directly to such descendant (determined on the date the addition is made, after taking into account all prior gifts to said descendant by the individual making that addition and assuming that his or her spouse, if any, will elect to "split" all gifts under Section 2513 of the Code),

and

- (B) the amount from prior years (if any) that remains subject to said descendant's power of withdrawal.

(3) Said rights of withdrawal may be exercised only by written notice to the Trustees and any such withdrawals shall be made out of additions to principal made during the current year, and, to the extent that those additions are insufficient, out of the balance of the principal. The Trustees shall notify the Settlor's spouse and each of the Settlor's descendants, living from time to time, in writing of his or her power of withdrawal with respect to each addition within fifteen days after the date the addition is made.

(4) (A) Each beneficiary's power of withdrawal in any calendar year shall lapse at the end of that year to the extent of,

- (i) the amount described in Section 2514(e) of the Code (which, if expressed as a percentage of the fair market value of trust principal, shall be that percentage determined as of the end of the year in question), combining, for this purpose, the fair market

values of the principal of the trust under this Agreement and of all other trusts as to which the beneficiary may have a power of withdrawal,

reduced (but not below zero) by,

- (ii) the amounts by which the beneficiary's powers of withdrawal with respect to each such trust shall have lapsed at the end of that year (assuming that, with respect to each beneficiary, his or her powers of withdrawal as to each such trust, including this trust, shall lapse in the order in which the trust granting such power was created).

(B) Each beneficiary's power of withdrawal shall lapse in its entirety, (i) upon the beneficiary's death, or (ii) upon the Settlor's death if any part of the principal of the trust is includable in the Settlor's gross estate for Federal estate tax purposes.

(5) Notwithstanding the foregoing, any individual making an addition to the principal shall have the right, by written instrument delivered to the Trustees when the addition is made, with respect to any power of withdrawal that otherwise would be created as a result of said addition, (A) to exclude any beneficiary from exercising his or her power of withdrawal that would otherwise be created, (B) to increase (but not exceeding the amount of his or her addition) or decrease the amount subject to any beneficiary's power of withdrawal, or (C) to change the period during which any beneficiary's powers of withdrawal may be exercised.

3. Upon the death of the Settlor, the then principal of the trust shall be held by the Trustees in further separate trust to pay the income therefrom in quarterly or more frequent installments to the Settlor's wife during her life.

The Trustees are authorized and empowered, from time to time, to pay to the Settlor's wife such sums out of the principal of the trust (even to the extent of the whole thereof) as the Trustees, in their absolute discretion, deem in her best interests.

Upon the death of the Settlor's wife, the then principal of the trust shall pass to such of one or more of the Settlor's descendants in such shares, equal or unequal, and subject to such lawful trusts, terms and conditions as the Settlor's wife shall by Will appoint. To the extent that said power of appointment shall not be effectively exercised, or upon the Settlor's death if the Settlor's wife predeceases the Settlor, said principal shall be divided into shares, per stirpes, for such of the Settlor's children TED STUART BERNSTEIN, ELIOT BERNSTEIN, JILL IANTONI and LISA SUE FRIEDSTEIN, as are then living and for the then living descendants of such of them as are then dead, and each such share shall be distributed absolutely, provided, however, that any share so set aside for a grandchild or more remote descendant of the Settlor who has not then attained the age of thirty shall be disposed of as provided in Article 4 of this Agreement.

4. All shares or portions above or below directed to be set aside for a grandchild or more remote descendant of the Settlor and directed to be disposed of as provided in this Article 4 shall be held by the Trustees in further separate trust to apply so much of the income therefrom for the health, education, maintenance or support of the beneficiary as the Trustees deem necessary or advisable, accumulating any balance of the income and adding the same to principal until the beneficiary attains the age of twenty-one; thereafter, the income shall be paid to the beneficiary in convenient installments.

The Trustees are authorized and empowered, from time to time, to pay to the beneficiary such sums out of the principal of the trust (even to the extent of the whole thereof) as the Trustees shall deem that the beneficiary needs for his or her health, education, maintenance or support.

Upon the beneficiary's attaining the age of twenty-five, one-half of the then principal of his or her trust shall be distributed to the beneficiary absolutely, and upon the beneficiary's attaining the age of thirty, the balance of the principal of his or her trust shall be distributed to the beneficiary absolutely.

In the event of and upon the death of the beneficiary during the continuance of his or her trust, the then principal thereof shall be divided into portions, per stirpes, for the beneficiary's then living descendants, or, in default thereof, for the then living descendants of the beneficiary's nearest ancestor who was a descendant of the Settlor and who has

descendants then living, or, in default thereof, for the Settlor's then living descendants, and each such portion shall be distributed absolutely, except that any portion so set aside for a grandchild or more remote descendant of the Settlor who is then the beneficiary of a trust under this Article 4 shall be added to the principal of said trust and disposed of as a part thereof, subject to subsequent, but not prior, mandatory distributions of principal, and any portion so set aside for a grandchild or more remote descendant of the Settlor who has not then attained the age of thirty and who is not then the beneficiary of a trust under this Article 4 shall be disposed of as provided in this Article 4.

5. The Trustees shall have the power, in their absolute discretion, at any time or from time to time: to apply for and to purchase contracts of insurance on the life of the Settlor; to make premium payments out of the income or principal on any policy of life insurance held by them hereunder; to exercise any of the rights or options with respect to any policy of life insurance held by them hereunder, whether granted in said policy or allowed by the insurer, including, but not limited to, surrendering, converting (into paid up or extended term insurance) or borrowing upon said policy, applying dividends against premiums or purchasing paid up additions, and exercising options with respect to conversion, surrender or payment of death proceeds.

6. If ALBERT W. GORTZ ceases to be qualified as a Trustee hereunder, the Settlor's daughter PAMELA BETH SIMON shall be entitled to qualify as successor Trustee in his place.

The Trustees from time to time qualified hereunder are authorized and empowered to designate one or more co-Trustees and, subject to the foregoing, a sole surviving Trustee at any time qualified hereunder is authorized and empowered to designate one or more successor Trustees to succeed himself or herself; provided, however, that the Settlor may not serve as a Trustee hereunder and that the Settlor's wife may not serve as a sole Trustee hereunder, and, provided further, that JEANNIE BERNSTEIN shall never be designated as or serve as a Trustee of any trust created hereunder.

An individual Trustee shall cease to be qualified as Trustee hereunder if he or she is under a legal disability or if by reason of illness or mental or physical disability, in the written opinion of two doctors then practicing medicine, he or she is unable to manage his or her affairs. Each Trustee acting hereunder hereby waives any doctor-patient privilege that may exist and authorizes said doctors to release all medical information that may be requested by the Trustees acting hereunder.

At all times at least one Trustee of any trust created hereunder shall not have an interest in the income or principal of such trust.

No bond or other security shall be required for any reason whatsoever of any Trustee named herein or designated as herein provided.

7. The Trustees hereunder shall have the following discretionary powers in addition to those conferred by law:

(a) To make any payment or distribution (required or authorized under this Agreement) either wholly or partly in kind at market value at date of distribution; to cause any share to be composed of cash, property or undivided fractional interests in property different in kind from any other share and without regard to the income tax basis of property allocated to any beneficiary.

(b) To continue to hold any property, real, personal or otherwise, including, but not limited to, stocks, bonds or other securities, domestic or foreign, in the form in which it shall be when received by them hereunder (without regard to any rule of law that may require them to decide whether or not to retain such property) or as the form thereof may be changed pursuant to the provisions of the other subdivisions of this Article, so long as they, in their absolute discretion, deem it advisable.

(c) To invest and reinvest in any property, including, but not limited to, stocks, bonds or other securities or so-called derivative investments, domestic or foreign, options to sell or to purchase such securities or so-called derivative investments (whether or not then held hereunder), shares or interests in mutual funds, investment companies, investment trusts or common trust funds of a bank or trust company, currencies, precious metals, oil and gas properties or other natural resources and commodities, or interests in, rights to or options to sell or to purchase any of the foregoing (whether or not then held hereunder), improved or unimproved real property or tangible personal property or life insurance, endowment, annuity or similar contracts (including such contracts insuring the then income beneficiary of any trust hereunder) that they may, in their absolute discretion, deem advisable, without regard to any duty to diversify or, except with respect to any trust for the benefit of the Settlor's spouse that qualifies for the marital deduction under either Federal or state law, to make such property productive of income, and in any manner, including by direct purchase, entry into a joint venture, creation of or purchase of an interest in any form of partnership or corporation or through any other form of participation or ownership.

(d) To employ any person, firm, corporation, bank or trust company for advice with respect to investment policy, but the Trustees may, in their absolute discretion, follow or refrain from following any recommendations so obtained, and said recommendations shall not in any way limit the discretionary power and authority herein conferred upon, and not otherwise delegated by, them with respect to investments; to designate a corporation, partnership or other firm, authorized so to act, as custodian, and to employ attorneys, accountants and bookkeepers; and to charge the fees and expenses of the foregoing to any trust hereunder.

(e) To exercise or perform every power, authority or duty, including discretionary powers, by the concurrence and in the names of a majority of the Trustees qualified to participate, with the same effect as if all had joined therein; but by unanimous vote of the Trustees they may determine the number (one or more) who may give instructions to custodians, sign checks or have access to safe deposit boxes.

(f) Severally to resign, by delivering to any successor or co-Trustee written notice of such resignation, to take effect at such date as said resigning Trustee may specify in said notice, without necessity for prior accounting or judicial approval.

(g) Severally to authorize, by instrument in writing, any person or corporation, including any co-Trustee, bank or trust company, to act in the place of said Trustee with respect to specified transactions, to sign a particular check or checks, or to execute any other specifically stated instruments in the name of said Trustee.

(h) To credit to principal or income or to apportion between them in such manner as they deem advisable any distributions from partnerships, any extraordinary, wasting or liquidating dividends, any dividends payable in the stock of the corporation paying the dividend or payable in the stock of another corporation and any so-called "capital gains dividends" declared by investment companies or investment trusts.

(i) To charge to principal or income or to apportion between them any ordinary or extraordinary expenses in such manner as they deem advisable.

(j) To determine if and to what extent they shall amortize any premium paid by them on bonds or other obligations for the payment of money.

(k) To alter, repair, improve, demolish, manage, partition, mortgage, lease for any period (including a period in excess of any fixed by statute and extending beyond the duration of the trusts herein), exchange, grant options to lease or to

buy, and sell or dispose of, at public or private sale and upon such conditions and such terms as to cash and credit as they deem advisable, any property held by them hereunder.

(l) To borrow such sums as they deem advisable for the proper administration of the trusts and to give security therefor.

(m) With respect to any property distributable absolutely to an infant remainderman: in their absolute discretion, to retain possession of and manage the same during his or her minority, with all the rights, powers and compensation of Trustees hereunder, and from time to time to apply so much of the income and principal thereof to the use of said infant as they deem advisable, accumulating any balance of the income and adding the same to principal at convenient intervals; upon said infant's attaining majority (or sooner death), the then principal and any accumulated income shall be distributed to said infant (or his or her estate); this power shall not affect the vesting of said property in said infant.

(n) In determining the amount of income or principal applicable to the use of an infant, to disregard the duty or ability of the parent or parents of said infant to support said infant; and to make payment of any income or principal, applicable to the use of or payable to an infant, (1) to the Guardian (qualified in any jurisdiction) of the person or property of such infant, or (2) to the parent or parents of such infant (whether or not legally appointed his or her Guardian(s)), or (3) to the extent permitted by law, to a Custodian for such infant under a Uniform Gifts to Minors Act or a Uniform Transfers to Minors Act and to select age twenty-one for termination of custodianship, or (4) to apply the same for his or her benefit; the receipt of such Guardian, parent or Custodian or the evidence of the application of such income or principal shall be a full discharge to the Trustees for such payment; provided, however, that with respect to any such payments to or for the benefit of the Settlor's grandchildren ALEXANDRA BERNSTEIN, ERIC BERNSTEIN and MICHAEL BERNSTEIN, no such payment shall be made to JEANNIE BERNSTEIN in any capacity as such grandchild's parent, guardian or Custodian.

(o) To remove any of the property held hereunder to or from any jurisdiction; to change the situs of administration of any trust hereunder from one jurisdiction to another and to elect the law of such other jurisdiction to govern the same.

(p) To organize or participate in the organization of corporations, and to transfer to them any part or all of the property held hereunder in exchange for securities thereof.

(q) To set apart out of the income of the trusts herein (or out of the income of corporations of which the trusts

own securities) reserves for such purposes including, without limitation, depreciation, depletion, obsolescence and other contingencies, and in such amounts as the Trustees, in their absolute discretion, shall deem advisable.

(r) To hold the principal or part of the principal of any of the trusts herein in one or more joint funds in which the separate trusts shall have undivided interests.

(s) To participate in and consent to any corporate reorganization, dissolution, liquidation, merger, consolidation, sale or lease, or in and to any other change in any corporation or in its financial structure, and to become a depositor with any protective, reorganization or similar committee, and to make all necessary payments incident to the foregoing; to exercise or to sell any conversion, subscription or similar rights; and in general to exercise in respect to any securities the unrestricted rights of a personal owner, including voting in person or by proxy.

(t) To the extent permitted by law, to register any of the property held hereunder in their names as Trustees or in the names of nominees, or to take and keep the same unregistered, in bearer form or otherwise in such condition as to pass by delivery.

(u) To lend such sums out of the income (other than of any trust for the benefit of the Settlor's spouse that qualifies for the marital deduction under either Federal or State law) or principal of the trusts hereunder and upon such terms and conditions as they deem advisable; provided, however, that under no circumstances may any loan be made to the Settlor.

(v) To exercise any settlement option with respect to the proceeds of any policy of life insurance payable to them as beneficiaries and, in the event of any controversy concerning the payment of such proceeds (or any other controversy with the insurer), to compromise any claim they may have, without the necessity of court approval; to receive such sums as may become payable to them as beneficiaries of any policy of life insurance, with authority to execute all necessary receipts and releases to the insurer, and, upon being advised of the death of the insured, to make efforts to collect such sums as may appear to be due them, without any obligation to institute suit or maintain any litigation to collect the proceeds of any such policy unless in possession of funds sufficient for that purpose or unless indemnified to their satisfaction for attorneys' fees, costs, disbursements and other expenses and liabilities to which they may be subjected by reason of such action; provided, however, that the Trustees may utilize any property held by them hereunder to pay expenses incurred in connection with enforcing the payment of any such sums due them. Any insurer issuing such policy shall, upon payment of the proceeds to the Trustees, be released

and discharged of any obligation to see that such proceeds are applied as provided in this Agreement and of any further liability to the Trustees or to any beneficiary hereof.

(w) To guarantee loans made to any beneficiary hereunder.

(x) To trade on margin (but only with the approval of the Settlor's spouse in the case of any trust that qualifies for the marital deduction under either Federal or state law) and, for such purpose, to maintain and operate a margin account with any broker and to pledge any property held hereunder with such broker for loans and advances made to them. In connection with the foregoing, the Trustees are authorized and empowered to hold title in and to property in bearer, nominee or other form, without disclosure of any trust, so that title may pass by delivery.

8. (a) All the powers granted in this Agreement may be exercised after the termination of the trusts in connection with the proper administration and distribution thereof.

(b) Except as otherwise provided in subdivision (o) of Article 7 of this Agreement, this Agreement shall be governed by and its validity, effect and interpretation determined by the laws of the State of Florida.

(c) This Agreement shall be irrevocable.

(d) In any judicial proceeding involving any trust hereunder and in any non-judicial settlement of the account of a Trustee hereunder, the interest of a person under disability may be represented by a party to such proceeding or settlement who is not under disability and who has the same interest.

(e) If any person beneficially interested hereunder shall die in the course of or as a direct result of the same disaster, accident or calamity as shall cause the death of the life beneficiary upon whose death said person's interest is to take effect or under such circumstances that it cannot be readily determined whether said life beneficiary or said person died first, then, for the purposes of this Agreement, said person shall be deemed to have died before said life beneficiary.

(f) Upon the commencement of the trusts herein and upon the death of an income beneficiary, or any other termination of the trusts herein, any accrued income (including dividends theretofore declared but not yet payable) shall be paid to the persons entitled to receive the income when it becomes payable, but any undistributed income which the Trustees are authorized in their discretion to accumulate shall be added to principal.

(g) Any income or principal payable to a beneficiary hereunder may, in the discretion of the Trustees, be applied by them for the benefit of said beneficiary.

(h) Notwithstanding any provision in this Agreement to the contrary, any power (including discretionary powers) granted to the Trustees hereunder shall be absolutely void to the extent that the right to exercise or the exercise thereof would in any way cause the Settlor's estate to lose all or part of the tax benefit afforded the Settlor's estate by the marital deduction provisions under either Federal or state laws; without limiting the foregoing, with respect to any trust for the Settlor's spouse that qualifies for the marital deduction under either Federal or state law, (1) subdivisions (h), (i), (j), (p), and (q) of the preceding Article of this Agreement and subdivision (f) of this Article shall not apply, and (2) the Settlor's spouse may direct the Trustees, from time to time, to sell any property held as part of the principal, if it produces little or no income, and to invest the proceeds of sale in property that produces sufficient income to assure that such trust will qualify for the marital deduction.

(i) Any Trustee who is an income beneficiary of a trust hereunder shall not be qualified to participate in the exercise of any power to make discretionary distributions to himself or herself or to make allocations, in his or her own favor, of receipts or expenses as between principal and income of such trust; nor shall any Trustee participate in the exercise of a discretionary power to pay or apply income or principal to or for the benefit of a beneficiary whom said Trustee (in his or her individual capacity) is then legally obligated to support; all said powers shall be exercisable by the other Trustee(s).

(j) With respect to any Trustee who is interested, in his or her individual capacity, in any firm or corporation in which the Settlor's estate or any trust hereunder may have an interest, said Trustee may deal freely with said firm or corporation in his or her individual capacity, notwithstanding that there may be a conflict with his or her fiduciary capacity hereunder, but, if one or more of said Trustees has no such personal interest, then as to all matters pertaining to said firm or corporation involving such conflict of interest the decision of said trust shall be made by said disinterested Trustee(s).

(k) A person from time to time qualified as Trustee hereunder shall not be disqualified from purchasing assets of the trust, provided (1) said purchaser shall not participate as Trustee in the decisions of the Trustees as to the price, conditions and terms of the sale, all of which decisions shall be made by the other Trustee(s); and (2) in fixing said price, conditions and terms said other Trustee(s) shall in all respects treat said purchaser in the same manner as though he or she were a third party, not qualified as Trustee.

(l) The Trustees may purchase assets from or sell assets to other estates or trusts not created hereunder, notwithstanding that one or more of said Trustees are fiduciaries of or beneficially interested in said estates or trusts; provided, however, that if one or more of said Trustees has no such interest, then as to all such matters the decision of the trusts hereunder shall be made by said disinterested Trustee(s).

(m) During the minority of any beneficiary, notice of his or her right to withdraw principal from a trust hereunder shall be given to and such right shall be exercisable on his or her behalf by his or her natural or legal guardian, his or her conservator, or his or her committee (in each case, other than the Settlor); provided, however, that no such notice shall be given to or exercisable by JEANNIE BERNSTEIN in any capacity as such beneficiary's natural or legal guardian, conservator, committee, parent or Custodian.

(n) The Settlor or any other person may from time to time add assets to the principal of the trusts hereunder, provided only that said assets are acceptable to the Trustees.

(o) All testamentary powers of appointment granted in this Agreement shall be exercisable only by specific reference to this Agreement and, except as provided in subdivision (p) herein, shall not be exercisable in favor of the power holder or his or her estate or his or her creditors or the creditors of his or her estate.

(p) Notwithstanding the provisions of Article 4 of this Agreement, if (1) pursuant thereto, upon the death of the beneficiary of a trust thereunder, any trust property would be set aside for a person who is assigned to a generation younger than that of the beneficiary under Section 2651 of the Code and if (2) said property would be subject to a generation-skipping transfer tax on the death of the beneficiary, but would not be subject to said tax to the extent that said property is includable in the beneficiary's estate for Federal estate tax purposes, then and in that event said property shall instead pass in such manner, including to his or her estate, if he or she shall so appoint, as the beneficiary shall by Will appoint with the unanimous prior written consent of all of the then qualified Trustees of said trust, except those whose required concurrence would prevent said power of appointment from being a "general power of appointment" within the meaning of Section 2041(b)(1) of the Code. Only if and to the extent that said power of appointment is not effectively exercised shall said property be disposed of as provided in said Article 4.

(q) Whenever property is directed to be held in a trust hereunder, the Trustees are authorized and empowered to establish two or more separate trusts for such property, with said trusts to have identical provisions, to the end that the

Federal generation-skipping transfer tax inclusion ratio, as defined in Section 2642(a) of the Code, of each trust will be either zero or one after allocation of the Settlor's available GST exemption pursuant to Section 2631 of the Code. The Trustees are further authorized and empowered to make different tax elections with respect to each such separate trust (including the allocation of the Settlor's available GST exemption), to invest such trusts in the same or different manners, to exercise any and all discretionary powers granted to them hereunder with respect to such separate trusts in the same or different manners, and to take any and all other actions consistent with the fact that such trusts are separate entities. The Settlor recommends (but does not direct) that no distribution of principal be made to a beneficiary from his or her trust(s) with a generation-skipping transfer tax inclusion ratio of zero until the trust(s) for his or her benefit with a generation-skipping transfer tax inclusion ratio of one shall first have been exhausted.

(r) Wherever in this Agreement property is directed to be added to an existing trust for a descendant of the Settlor hereunder, the Trustees shall not combine property with different generation-skipping transfer tax inclusion ratios, as defined in Section 2642(a) of the Code, but shall add such property to the trust for such descendant hereunder which has the same generation-skipping transfer tax inclusion ratio as defined in Section 2642(a) of the Code as such property, or, if necessary, such property shall be held in a separate trust for such descendant, with said trust to have identical provisions to the existing trust for such descendant hereunder.

(s) If, at any time, there shall be a trust created under the Settlor's Will, the Will of the Settlor's spouse or a trust created by the Settlor or the Settlor's spouse (or both of them) during the Settlor's lifetime, for the same beneficiaries and subject to the same provisions as a trust under this Agreement (or as a trust intended to be created under this Agreement), or if there shall be more than one trust under this Agreement for the same beneficiaries and subject to the same provisions, the Trustees are authorized and empowered, in their absolute discretion, to transfer the principal held (or intended to be held) in trust hereunder to the Trustees of such other trust (whether or not the Trustees of such other trust or their successors are the Trustees nominated or appointed hereunder) or to combine them (unless such trusts have different generation-skipping transfer tax inclusion ratios, as defined in Section 2642(a) of the Code) to form a single trust for simplicity and convenience of administration; provided, however, that if any such trusts are prevented from being combined or otherwise consolidated pursuant to the provisions of this subdivision because any such trust has a different maximum period of time that property held in such trust could remain held in such trust (the "perpetuities period"), the Trustees shall be permitted to combine or otherwise consolidate such trusts pursuant to the

provisions of this subdivision with the resulting trust assigned the lesser of the perpetuities periods of the original trusts.

(t) Wherever the context permits, the word "Trustees" shall be deemed to include "their survivor or survivors, successor or successors."

(u) To the extent permitted by law, none of the beneficiaries hereunder shall have the power to convey, anticipate, assign, encumber or in any way dispose of any part of the income or principal of their respective trust funds, nor shall said principal or income be in any way or in any amount answerable or chargeable with their duties, obligations, judgments or claims however arising, nor shall said principal or income be taken or reached by any legal or equitable process in satisfaction thereof, it being the Settlor's intent, so far as the law allows, to make said trusts what are commonly known as "spendthrift trusts."

(v) In no event shall any addition to the trust be made less than thirty days before the end of any calendar year.

(w) In no event shall any trust hereunder continue longer than the maximum term allowable under Florida law (or any other state that may govern the provisions of this Agreement) in effect at the date of this Agreement, and any trust then still in effect hereunder shall thereupon terminate and the then principal thereof shall be distributed absolutely to the beneficiary thereof.

(x) In determining whether or not to exercise any discretionary power to pay income or principal of any trust hereunder, the Trustees may, but shall not be required to, (1) with respect to the trust created under Article 3 of this Agreement, take into account any other resources available to the beneficiary under consideration; (2) take into account any effect the exercise thereof may have on the respective tax liabilities of any trust hereunder and the beneficiary under consideration; and (3) consider and accept as correct any statement concerning these matters made by the beneficiary under consideration or on behalf of such beneficiary.

(y) The Trustees must own each policy of insurance purchased by the Trustees or contributed to the trust. The Trustees shall have no liability or responsibility for any loss resulting from the failure of any insurance company and inability to pay its claim under any insurance policy purchased by the Trustees. The Trustees shall have the power to borrow any sum in accordance with the provisions of any such insurance contracts; however, the Trustees shall be under no obligation to invest any cash value accumulated in any life insurance policy owned by the trust regardless of the investment yield on such value within the policy as compared to the net investment yield which could be

obtained outside the policy. Except as expressly provided otherwise herein, the Trustees shall be under no duty or obligation to exercise any benefit, option or privilege granted by any insurance policy and the Trustees shall not be liable or accountable to anyone for the exercise or non-exercise of any such benefit, option or privilege, including the ability to borrow against the cash values to obtain a higher investment yield outside the policy.

(z) The Trustees shall be responsible for the proceeds of the policies only when, as and if collected by them, and the Trustees shall not be liable or accountable to anyone if, because of default in premium payments, failure of the insurance company or for any other reason whatsoever, the policies, or any of them, shall lapse or be otherwise uncollectible. The Trustees shall not be deemed, because of this trust, to have entered into any covenant to keep any insurance policies in force.

(aa) In determining the amount of any power to withdraw principal that may lapse under this Agreement, the Trustees may rely upon the written statement of the Trustees of any other trust to which this Agreement refers as to the fair market value of the principal thereof at the end of any year and shall have no duty to inquire as to the correctness of such statement.

(bb) Wherever reference is made in this Agreement to the "Code" it shall mean the Internal Revenue Code of 1986, as amended, and, if to any specific provision, it shall include any comparable provision of any subsequently enacted revenue law of the United States in effect from time to time.

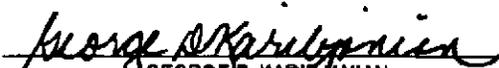
9. The term "descendants" as used in this Agreement shall specifically exclude the Settlor's daughter PAMELA BETH SIMON and her descendants. The Settlor has not made any provisions herein for PAMELA BETH SIMON or any of her descendants not out of lack of love or affection but because they have been adequately provided for.

10. The Trustees hereby accept the trust herein and

agree to carry out the provisions hereof and faithfully to perform and discharge all of their duties as Trustees.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of the following persons, each of whom also signed as a witness in the presence of the Settlor

  
GEORGE D. KARIBJANIAN

 (L.S.)  
SIMON BERNSTEIN, Settlor

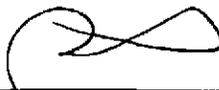
Print Name 183 S.W. 20TH STREET

Address BOCA RATON, FLORIDA 33486

  
Robert Jacobowitz  
Print Name  
2415 NW 32nd St.  
Address  
Boca Raton, FL

Signed, sealed and delivered  
in the presence of the following  
persons, each of whom also signed  
as a witness in the presence of  
the Trustee

*George D. Karibjanian*  
GEORGE D. KARIBJANIAN

 (L.S.)  
SHIRLEY BERNSTEIN, Trustee

Print Name 1133 S.W. 20TH STREET

Address BOCA RATON, FLORIDA 33486

  
Robert Jacobowitz

Print Name 2415 NW 32nd St

Address Boca Raton, FL

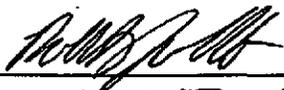
Signed, sealed and delivered  
in the presence of the following  
persons, each of whom also signed  
as a witness in the presence of  
the Trustee

*George D. Karibjanian*  
GEORGE D. KARIBJANIAN

*Albert W. Gortz* (L.S.)  
ALBERT W. GORTZ, Trustee

Print Name 1133 S.W. 20TH STREET

Address BOCA RATON, FLORIDA 33486

  
Robert Jacobowitz

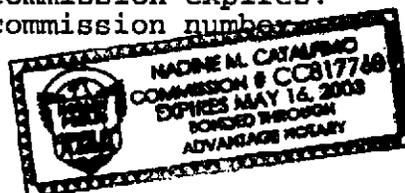
Print Name 2415 NW 32nd St

Address Boca Raton, FL

STATE OF FLORIDA )  
 ) SS.:  
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of August, 2000 by SIMON BERNSTEIN, who is personally known to me or has produced \_\_\_\_\_ as identification.

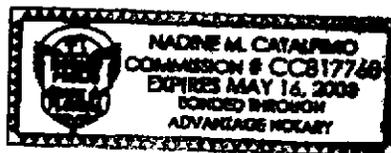
*Nadine M. Catalano*  
\_\_\_\_\_  
Notary Public (Affix Seal)  
My commission expires:  
My commission number:



STATE OF FLORIDA )  
 ) SS.:  
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of August, 2000 by SHIRLEY BERNSTEIN, who is personally known to me or has produced \_\_\_\_\_ as identification.

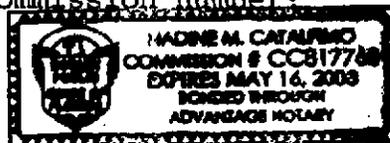
*Nadine M. Catalano*  
\_\_\_\_\_  
Notary Public (Affix Seal)  
My commission expires:  
My commission number:



STATE OF FLORIDA )  
 ) SS.:  
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of August, 2000 by ALBERT W. GORTZ, who is personally known to me or has produced \_\_\_\_\_ as identification.

*Nadine M. Catalano*  
\_\_\_\_\_  
Notary Public (Affix Seal)  
My commission expires:  
My commission number:



**SCHEDULE A**  
**TRUST AGREEMENT** dated the 4th day  
of August, 2000, between  
**SIMON BERNSTEIN**, as Settlor,  
and **SHIRLEY BERNSTEIN AND**  
**ALBERT W. GORTZ**, as Trustees

The following life insurance policies:

Lincoln Benefit Life Company, Policy No.: U0204204

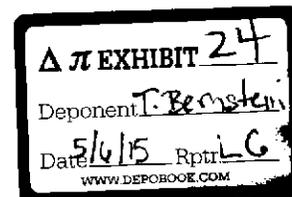
Capitol Bankers Life Insurance Company,  
Policy No.: 1009208

**SIMON L. BERNSTEIN**  
**AMENDED AND RESTATED TRUST AGREEMENT**

*Prepared by:*

Tescher & Spallina, P.A.  
4855 Technology Way, Suite 720, Boca Raton, Florida 33431  
(561) 997-7008  
[www.tescherspallina.com](http://www.tescherspallina.com)

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**TESCHER & SPALLINA, P.A.**



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**SIMON L. BERNSTEIN**

**AMENDED AND RESTATED TRUST AGREEMENT**

This Amended and Restated Trust Agreement is dated this 26 day of July, 2012, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, Florida and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "Trustee," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SIMON L. BERNSTEIN TRUST AGREEMENT (the "Trust Agreement," which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke said Trust Agreement, in whole or in part.

NOW, THEREFORE, I hereby amend and restate the Trust Agreement in its entirety and the Trustee accepts and agrees to perform its duties and obligations in accordance with the following amended provisions. Notwithstanding any deficiencies in execution or other issues in regard to whether any prior version of this Trust Agreement was a valid and binding agreement or otherwise created an effective trust, this amended and restated agreement shall constitute a valid, binding and effective trust agreement and shall amend and succeed all prior versions described above or otherwise predating this amended and restated Trust Agreement.

**ARTICLE I DURING MY LIFE AND UPON MY DEATH**

A. **Rights Reserved.** I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

B. **Payments During My Life.** If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare. Any income not so paid shall be added to principal.

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

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C. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

## ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Disposition of Trust Upon My Death. Upon my death, the remaining assets in this trust shall be divided among and held in separate Trusts for my then living grandchildren. Each of my grandchildren for whom a separate trust is held hereunder shall hereinafter be referred to as a "beneficiary" with the separate Trusts to be administered as provided in Subparagraph II.C.

C. Trusts for Beneficiaries. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the net income and principal of such beneficiary's trust as is proper for the Welfare of such individuals. Any income not so paid shall be added to principal each year. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any grandchild of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of any of my lineal descendants (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

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1. for his or her lineal descendants then living, *per stirpes*, or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

**D. Termination of Small Trust.** If at any time after my death in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

**E. Contingent Gift.** If at any time property of these Trusts is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if I had then owned such property and had then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

**F. Protective Provision.** No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

**G. Maximum Duration.** Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years after the date of creation of this Agreement, nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

### ARTICLE III. GENERAL

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AMENDED AND RESTATED TRUST AGREEMENT

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A. Disability. Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. Timing of Income Distributions. The Trustee shall make required payments of income at least quarterly.

C. Substance Abuse.

1. In General. If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

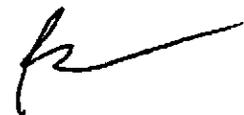
a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended. In that event, the following provisions of this Subparagraph III.C will apply.

2. Testing. The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. Treatment. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an



in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child*," "*children*," "*grandchild*," "*grandchildren*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children born of female lineal descendants, and (c) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

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raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

2. Code. "Code" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "Disabled" or being under "Disability" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "education" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. Needs and Welfare Distributions. Payments to be made for a person's "Needs" means payments necessary for such person's health (including lifetime residential or nursing home care), education, maintenance and support. Payments to be made for a person's "Welfare" means discretionary payments by the Trustee, from time to time, for such person's Needs and also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to

SHIMON L. BERNSTEIN  
AMENDED AND REPEATED TRUST AGREEMENT

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such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

6. Per Stirpes. In a division "*per stirpes*" each generation shall be represented and counted whether or not it has a living member.

7. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

8. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

- a. the legal termination of the marriage to my descendant (whether before or after my death), or
- b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

The trust will be administered as if that person had died upon the happening of the terminating event described above.

9. Gender Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such

SIMON L. BRUNSTEIN  
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Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

H. Presumption of Survivorship. If any person shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. Governing Law. This Agreement is governed by the law of the State of Florida.

J. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. Release of Medical Information.

I. Disability of Beneficiary. Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries and myself if a beneficiary) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested



beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Ability to Amend or Revoke. The foregoing provisions of this paragraph shall not constitute a restriction on myself to amend or revoke the terms of this trust instrument under paragraph 1A hereof, provided I otherwise have legal capacity to do so.

4. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

#### ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "estate"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any

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decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.

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4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole

proprietorship, or other form (all of which business entities and enterprises are referred to herein as "*Business Entities*"). I vest the Trustee with the following powers and authority in regard to Business Entities:

- a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;
- b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;
- c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;
- d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;
- e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;
- f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;
- g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;
- h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and
- i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.

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11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided, unless otherwise provided in this instrument, the Trustee shall establish out of income and credit to principal reasonable reserves for depreciation, obsolescence and depletion, determined to be equitable and fair in accordance with some recognized reasonable and preferably uncomplicated trust accounting principle and; provided, further that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.

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18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

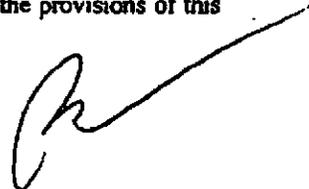
23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this

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paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

26. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

27. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate.

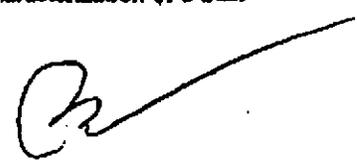
28. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

29. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. Appointment of Successor Trustee.

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, ROBERT L. SPALLINA and DONALD R. TESCHER shall serve together as successor co-Trustees, or either of them alone as Trustee if either of them is unable to serve. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust



hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances provided that the foregoing appointments shall apply when and to the extent that no effective appointment is made below:

a. Trustee of Separate Trusts for My Grandchildren. Each grandchild of mine shall serve as co-Trustee with the immediate parent of such grandchild which parent is also a child of mine as to all separate trusts under which such grandchild is the sole current mandatory or discretionary income beneficiary upon attaining the age of twenty-five (25) years, and shall serve as sole Trustee of such trusts upon attaining the age of thirty-five (35) years. While serving alone as Trustee, a grandchild of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such grandchild and such grandchild may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

b. Trustee of Separate Trusts for My Lineal Descendants Other Than My Grandchildren. In regard to a separate trust held for a lineal descendant of mine other than a grandchild of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon attaining age twenty-five (25) years. While serving alone as Trustee, a lineal descendant of mine other than a grandchild of mine may designate a co-Trustee to serve with such lineal descendant and such lineal descendant may remove and/or replace such co-Trustee with another from time to time.

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

- a. The remaining Trustees, if any; otherwise,
- b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or

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entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 35 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, other than a named Trustee or successor Trustee designated hereunder, or a Trustee appointed by me during my lifetime or under my Will or otherwise at the time of my death, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph [V.G.], each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual

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and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation, Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

L. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the

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Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

**K. Third Parties.** No one dealing with the Trustee need inquire into its authority or its application of property.

**L. Merger of Trusts.** If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

**M. Multiple Trustees.** If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

#### ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

**A. GST Trusts.** I direct (a) that the Trustee shall divide any trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions hereof) so that the generation-skipping tax inclusion ratio of one such trust is zero, (b) any property exempt from generation-skipping taxation shall be divided as otherwise provided herein and held for the same persons

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designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and issue, as such beneficiary may appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such Trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. For purposes of funding any pecuniary payment to which there is allocated any GST exemption, such payment shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this paragraph which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution or otherwise or is not reasonably available. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

**B. Individual Retirement Accounts.** In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

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1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Gift Transfers Made From Trust During My Lifetime. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. Recipients. The gifts may be made only to my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).

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2. Trustee Limited. When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent (5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

E. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,
2. my funeral expenses without regard to legal limitations,
3. the expenses of administering my estate,
4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and
5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property."

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F. **Subchapter S Stock.** Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

G. **Residence as Homestead.** I reserve the right to reside upon any real property placed in this trust as my permanent residence during my life, it being the intent of this provision to retain for myself the requisite beneficial interest and possessory right in and to such real property to comply with Section 196.041 of the Florida Statutes such that said beneficial interest and possessory right constitute in all respects "equitable title to real estate" as that term is used in Section 6, Article VII of the Constitution of the State of Florida. Notwithstanding anything contained in this trust to the contrary, for purposes of the homestead exemption under the laws of the State of Florida, my interest in any real property in which I reside pursuant to the provisions of this trust shall be deemed to be an interest in real property and not personalty and shall be deemed my homestead.

*[remainder of page intentionally left blank]*

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IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:

*[Handwritten Signature]*

SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 21 day of July, 2012:

*[Handwritten Signature]*  
Print Name: ROBERT J. SPALLINA  
Address: 7387 WISTERIA AVENUE  
PARKLAND, FL 33076

*[Handwritten Signature]*  
Print Name: Kimberly Moran  
Address: 6362 LAS FLORES DRIVE  
BOCA RATON, FL 33433

STATE OF FLORIDA  
COUNTY OF PALM BEACH SS.

The foregoing instrument was acknowledged before me this 25 day of July, 2012, by SIMON L. BERNSTEIN.

*[Handwritten Signature]*  
Signature - Notary Public - State of Florida  
Lindsay Baxley  
Print, type or stamp name of Notary Public

[Seal with Commission Expiration Date]

NOTARY PUBLIC-STATE OF FLORIDA  
**Lindsay Baxley**  
Commission # EE092282  
Expires: MAY 10, 2015  
BORNED THRU ATLANTIC BONDING CO., INC.

Personally Known \_\_\_\_\_ or Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

**SIMON L. BERNSTEIN**  
**IRREVOCABLE TRUST AGREEMENT**

*Prepared by:*

**Tescher & Spallina, P.A.**  
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431  
(561) 998-7847  
[www.tescherlaw.com](http://www.tescherlaw.com)

**TESCHER & SPALLINA, P.A.**

$\Delta \pi$ EXHIBIT	25
Deponent	T. Bernstein
Date	5/6/15 Rptr. LG
<a href="http://WWW.DRPOBOOK.COM">WWW.DRPOBOOK.COM</a>	

**SIMON L. BERNSTEIN**

**IRREVOCABLE TRUST AGREEMENT**

THIS AGREEMENT, made this 20 day of May, 2008, between SIMON L. BERNSTEIN, of Palm Beach County, Florida hereafter called "Trustor," and WILMINGTON TRUST COMPANY, a Delaware corporation, hereafter called "Trustee," WITNESSETH:

WHEREAS, Trustor desires to establish a trust of the property described in the attached "Schedule A" and other property which may be added from time to time, all of which is hereafter called the "trust fund;" and

WHEREAS, Trustee accepts such trust and agrees to administer it in accordance with the terms and conditions of this agreement;

NOW, THEREFORE, Trustor hereby gives Trustee the property described in "Schedule A," in trust, for the following purposes:

**SECTION 1: DISTRIBUTION.**

A. During Trustor's Lifetime. During Trustor's lifetime, Trustee may, from time to time and subject to Subsection D of this Section 1, distribute all, some, or none, of the net income and principal to Trustor and Trustor's wife, SHIRLEY BERNSTEIN, as Trustee deems appropriate. Trustee shall take into account other sources of funds available to them. Trustee shall accumulate any net income not so distributed and add it to principal, to be disposed of as a part of it.

B. On Trustor's Death. On Trustor's death, Trustee shall distribute the trust fund to such person or persons, other than Trustor, Trustor's creditors, Trustor's estate, and the creditors of Trustor's estate, in such manner and amounts, and on such terms, whether in trust or otherwise, as Trustor effectively appoints by specific reference hereto in his Will. However, Trustor may, from time to time, release this special power of appointment, in whole or in part, by a written instrument delivered to Trustee during his lifetime. On Trustor's death, Trustee shall distribute the remaining assets of this Trust to the then serving Trustee of the SIMON L. BERNSTEIN TRUST AGREEMENT dated May 13, 2008, as may be amended and restated from time to time, to be held and administered as provided thereunder.

C. Contingent Gift. If at any time Trustee holds any portion of the principal of any trust not disposed of effectively under the previous provisions, then at such time Trustee shall distribute such principal, free from trust, to such then living person or persons as are then determined to be Trustor's distributees by the application of the intestacy laws of the State of Delaware governing the distribution of intestate personal property then in effect, as though Trustor had died at that particular time, intestate, a resident of the State of Delaware and owning such property then so distributable.

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D. Distribution Adviser. Trustee shall exercise its discretionary power to distribute income and/or principal to Trustor's wife pursuant to Subsection A of this Section 1 only with the written consent of the distribution adviser who shall be Trustor, so long as he is willing and able to act in such capacity. If at any time there is no distribution adviser, or if such adviser fails to express in writing to Trustee consent or disapproval as to the exercise of any discretionary power within fifteen (15) calendar days after Trustee has sent a written request for such consent to such adviser's last known address by certified mail (or by any other means for which the sender shall have evidence of receipt by the addressee), Trustee may act in the matter as it deems appropriate. The distribution adviser shall act in a fiduciary capacity and conform to the purposes of this agreement. Such adviser shall have no duty to inquire into or see to the performance by Trustee of its duties under this agreement. The distribution adviser shall receive no compensation and shall not be reimbursed for expenses incurred while acting as such adviser.

**SECTION 2: MERGER WITH SIMILAR TRUSTS.**

If at any time a trust is set aside for any person or persons under the terms of this agreement which is substantially the same as any other trust established for that person or persons by Trustor or Trustor's wife, Trustee may, in its sole discretion, merge the trust created hereunder with the other trust for such person or persons, and the two trusts shall thereafter be held, administered, and distributed as one.

**SECTION 3: ALTERNATIVE METHODS OF DISTRIBUTION.**

Trustee may take any reasonable steps to disburse funds to or for a beneficiary, including: (i) distribution, either by hand or mail, to the beneficiary or the guardian of the person or property (whether the guardian is formally appointed or a natural guardian), (ii) distribution to a custodian for the beneficiary under the Uniform Transfers to Minors Act (or similar statute) of any state, (iii) deposit to the account of the beneficiary in any federally insured depository, or (iv) direct application for the benefit of the beneficiary.

**SECTION 4: SPENDTHRIFT PROVISION.**

No beneficiary (including Trustor) may alienate or in any other manner, whether voluntary or involuntary, assign, transfer, pledge, or mortgage his or her interest in any trust hereunder, and no one (including a spouse or former spouse) may attach or otherwise reach any interest of any beneficiary hereunder to satisfy a claim against that beneficiary, whether the claim is legal or equitable in origin. The provisions of this Section shall not limit or otherwise affect any power of appointment conferred upon a beneficiary or the right of a beneficiary to disclaim or release any interest created hereunder. This Section constitutes a restriction on the transfer of Trustor's beneficial interest in the trust fund that is enforceable under applicable non-bankruptcy laws within the meaning of Section 541(c)(2) of the Bankruptcy Code (11 U.S.C. § 541(c)(2)) or any other similar or successor statute.

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**SECTION 5: PAYMENT OF DEATH TAXES, DEBTS, AND EXPENSES OF ADMINISTRATION.**

On the death of the Trustor, Trustee shall, unless otherwise directed by the beneficiary's Will or Revocable Trust Agreement, distribute to the Personal Representative of the beneficiary's estate an amount equal to the sum of all additional transfer taxes and costs of administration payable by such Personal Representative as a result of the inclusion of the trust in the Trustor's estate. Certification of such Personal Representative as to the amount of such additional taxes and costs will be determinative for all purposes. Trustee shall make such distributions directly to the appropriate payee, if so directed by such Personal Representative.

**SECTION 6: TRUSTEE'S POWERS.**

In addition to those powers granted by law, Trustee is specifically authorized and empowered, in its sole discretion, but subject to the provisions of Section 7:

A. To sell at public or private sale, exchange for like or unlike property, convey, lease for terms longer or shorter than the trust, and otherwise dispose of any or all property held hereunder, for such price and upon such terms and credits as it deems proper.

B. To invest in any kind of property, real, personal, or mixed, regardless of the laws governing investments by fiduciaries, without any duty to diversify investments.

C. Unless otherwise directed by the investment adviser named in Section 7 hereof, to execute securities transactions, without necessity of providing written confirmation thereof to such adviser at the time of settlement, and to execute securities transactions through any brokerage service, whether discount or full service, including Wilmington Brokerage Services at its normal rates of compensation, without diminution of compensation otherwise payable to Trustee, even if Wilmington Trust Company is serving as Trustee.

D. To vote directly or by proxy at any election or stockholders' meeting any shares of stock, excluding stock of Wilmington Trust Corporation.

E. To participate in any plan or proceeding, including any voting trust plan for liquidating, protecting, or enforcing any interest in any property, or for reorganizing, consolidating, merging, or adjusting the finances of any corporation issuing any such interest; to accept in lieu thereof any new or substituted stocks, bonds, notes, or securities, whether of the same or a different kind or class, or with different priorities, rights, or privileges; to pay any assessment or any expense incident thereto; and to do any other act or thing that it deems necessary or advisable in connection therewith.

F. To deposit, or arrange for the deposit of, securities at Depository Trust Company (DTC) and/or at any other securities depository or clearing corporation.

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G. To make any division or distribution in cash or in kind, or partly in cash and partly in kind; and to elect to recognize taxable gain or loss resulting from a distribution. Trustee may consider the income tax basis of the property then available for division or distribution, as well as the circumstances of the beneficiaries, and need not make division or distribution on a pro rata, asset-by-asset basis. Trustee shall not adjust the interest of any beneficiary as a result of any action taken or forborne under the provisions of this Subsection G.

H. To make loans, against adequate collateral, to any person including the Personal Representative of the estate of Trustor or any beneficiary and/or to purchase any property at its then fair market value from any person including such Personal Representative.

I. To borrow money from any person or corporation, including Trustee, and to pledge or mortgage as security any real or personal property.

J. To litigate, submit to arbitration, compromise, or settle any claim in favor of or against any trust hereunder, and to execute all agreements, deeds, and releases necessary or proper in connection therewith.

K. To retain attorneys-at-law, accountants, investment counsel, agents, and other advisers without diminution of compensation otherwise payable to Trustee.

L. To pay the taxes and expenses of maintaining, repairing, improving, and insuring any real property held hereunder.

M. To receipt for the proceeds of any life insurance made payable to Trustee, to institute any suit or proceedings, and to take any action necessary to collect such proceeds. However, Trustee need not institute any suit or proceeding unless its expenses, including counsel fees and costs, are available in the trust fund or are advanced or guaranteed in an amount and in a manner reasonably satisfactory to it.

N. To renounce, in whole or in part, any property or interest in property which may become payable to any trust hereunder, except to the extent that the distribution of such property resulting from such renunciation is fundamentally inconsistent with the provisions of this agreement.

O. To divide any trust hereunder into separate trusts if the purposes for which the trust was created are better served thereby.

P. To consider gains from the sale of capital assets in the trust to be part of a mandatory or discretionary distribution of principal to a beneficiary.

#### SECTION 7: INVESTMENT ADVISER.

Trustee shall exercise the powers hereinbefore granted to it in Subsections A, B,

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D, E, H and I of Section 6 with respect to each trust hereunder only with the written consent or on the written direction of the investment adviser of such trust, provided that: (i) Trustee shall sell any Wilmington Trust Corporation stock held by it hereunder unless specifically directed to do otherwise by such adviser; (ii) the purchase, sale, and voting of Wilmington Trust Corporation stock shall be solely on the direction of the investment adviser; (iii) Trustee shall manage and invest the otherwise uninvested cash in each such trust in its sole discretion; (iv) the investment adviser may at any time, or from time to time, delegate to Trustee the authority to exercise in its sole discretion the power to buy or sell any property (or, having delegated the authority to do so, revoke such authority); and (v) if at any time during the continuance of any such trust there shall be no investment adviser of such trust, or if the investment adviser of such trust shall fail to communicate in writing to Trustee his or her consent, disapproval, or direction as to the exercise of any of the aforesaid powers for which exercise the consent or direction of such adviser shall be necessary, within twenty (20) days after Trustee shall have sent to such adviser, by certified mail (or by any other means for which the sender shall have evidence of receipt by the addressee), at his or her last known address, a written request for such consent or direction (notwithstanding that Trustee shall be under no obligation to request any such direction), then Trustee is hereby authorized and empowered to take such action in the premises as it, in its sole discretion, shall deem to be for the best interest of the beneficiaries of such trust. The investment adviser hereunder shall be Trustor and Trustor's wife, in the order named, while willing and able to act in such capacity. Initially, Trustee shall exercise such powers on the direction of the investment adviser, but the investment adviser may establish from time to time whether the Trustee shall exercise such powers with the consent or on the direction of such adviser. To qualify, any person appointed investment adviser of a trust hereunder shall deliver a written instrument to Trustee indicating acceptance and agreement that all powers conferred upon such adviser will be exercised in a fiduciary capacity for the exclusive interest of the beneficiaries. The investment adviser need not inquire into the Trustee's performance of its duties and shall not be held liable for any loss whatsoever to any trust hereunder, unless it results from actions taken in bad faith. The investment adviser shall serve without compensation, but the investment adviser (other than Trustor) may be reimbursed for out-of-pocket expenses, including investment counsel fees.

#### SECTION 8: ADDITIONS TO THE TRUST FUND.

With the consent of Trustee, any person may add property to any trust hereunder, and such property shall thereafter be held by Trustee as a part thereof.

#### SECTION 9: IRREVOCABILITY.

This trust shall be irrevocable and not subject to amendment by Trustor or any other person. However, Trustee is authorized to modify or amend the provisions of this agreement to ensure that this agreement is a qualified disposition under the Act. Trustee may rely upon the advice of counsel in taking any action pursuant to the authority given to Trustee, and Trustee shall be without liability therefor.

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**SECTION 10: PAYMENT OF INCOME.**

Except where otherwise provided, the payment of the net income of any trust hereunder shall be made at such times as are convenient to the beneficiary and agreed to by Trustee.

**SECTION 11: NON-ACCRUAL OF INCOME.**

Notwithstanding any statute or rule of law to the contrary, any income accrued or on hand and not actually distributed to a beneficiary upon the termination of his or her interest shall be treated as though it had, in fact, accrued thereafter. Any income accrued upon shares of stock or interest-bearing property when delivered to Trustee shall be treated as though such income had, in fact, accrued after such delivery.

**SECTION 12: THIRD PARTIES NOT OBLIGED TO FOLLOW FUNDS.**

No person or corporation dealing with Trustee shall be obliged to see to the application of money paid or property delivered to Trustee, to inquire into the propriety of Trustee's exercising its powers, or to determine the existence of any fact upon which Trustee's power to perform any act hereunder may be conditioned.

**SECTION 13: TRUSTEE'S COMPENSATION.**

Trustee shall receive compensation for its services hereunder from time to time in accordance with the current rates then charged by it for trusts of similar size and character. If Trustee renders any extraordinary services, it may receive additional compensation therefor.

**SECTION 14: RESIGNATION AND REMOVAL OF TRUSTEE.**

At any time during the remainder of Trustor's life, Trustee may resign by written notice delivered to Trustor, and WILLIAM E. STANSBURY may remove Trustee by written notice delivered to it. In either case, WILLIAM E. STANSBURY may appoint another bank or trust company that is described in Section 3570(9) of the Act, as successor Trustee by written notice delivered to Trustee. During Trustor's lifetime, Trustee shall be deemed to have resigned on the date on which: (i) it ceases to be a Trustee described in Section 3570(9) of the Act; or (ii) a court takes any action whereby such court declines to apply Delaware law in determining the validity, construction, or administration of any trust hereunder or of the effect of the spendthrift provision hereunder in any action brought against trustee. Unless objections are filed as provided below, Trustee shall, within ninety (90) days after it resigns or is removed, deliver any assets held hereunder to the successor Trustee. If WILLIAM E. STANSBURY does not appoint such a successor Trustee, Trustee may petition the appropriate court to appoint such a successor Trustee. Upon resignation or removal, Trustee shall deliver a statement of its activities to the

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date of such resignation or removal for which it has not reported to the person to whom Trustee was directed to give notice of resignation or who was authorized to remove Trustee. Such person shall have sixty (60) days from receipt of such statement to file with Trustee any objections to its actions as Trustee. If no such objections are filed, Trustee shall be without any further liability or responsibility to any past, present, or future beneficiaries. No successor Trustee shall be required to examine into the acts of its predecessor Trustee, and each successor Trustee shall have responsibility only with respect to the property actually delivered to it by its predecessor Trustee.

**SECTION 15: SIMULTANEOUS DEATH.**

If Trustor and Trustor's wife die under circumstances where the order of deaths cannot be determined, and if any of the principal is includable in Trustor's estate for transfer tax purposes, then for the purposes of this agreement with respect to such principal, Trustor's wife shall be deemed to have survived Trustor and died immediately thereafter.

**SECTION 16: TRUST SITUS.**

This agreement creates a Delaware trust, and all matters pertaining to the validity, construction, and application of this agreement or to the administration of the trusts created by it shall be governed by Delaware law.

**SECTION 17: DEFINITIONS.**

A. "Trustor's wife" refers to SHIRLEY BERNSTEIN.

B. "Code" means the Internal Revenue Code of 1986, as amended, or any corresponding federal tax statute enacted after the date of this agreement. A reference to a specific section of the Code refers not only to that section but also to any corresponding provision of any federal tax statute enacted after the date of this agreement, as in effect on the date of application.

C. "Transfer taxes" means all applicable federal estate taxes (except additional estate taxes imposed under Section 2032A of the IRC), state estate or inheritance taxes, and generation-skipping transfer taxes imposed on any "direct skip" (as defined in Chapter 13 of the Code) other than a direct skip from a trust or resulting from a disclaimer, and any interest and penalties thereon. The term does not include federal or state gift taxes, generation-skipping transfer taxes imposed on a "taxable termination," a "taxable distribution," or a "direct skip" from a trust or resulting from a disclaimer, income taxes, real estate transfer taxes, or any tax or duty imposed by a foreign country or political subdivision thereof. In addition, the term does not include any tax imposed by Section 2056A of the Code or any corresponding provision of applicable state law.

TESCHER & SPALLINA, P.A.

D. "Act" means the Delaware Qualified Dispositions in Trust Act (12 Delaware Code Section 3570, et seq.), as amended, or any corresponding Delaware statute enacted after the date of this agreement. A reference to a specific section of the Act refers not only to that section but also to any corresponding provision of any Delaware statute enacted after the date of this agreement, as in effect on the date of application.

E. Use of any gender in this agreement includes the masculine, feminine and neuter genders as appropriate. Use of the singular number includes the plural and vice versa unless the context clearly requires otherwise.

F. "Personal Representative" means the executor or administrator of a decedent's estate and shall include all persons serving in such capacity from time to time.

G. Use of the verb "shall" in this agreement indicates a mandatory direction, and use of the verb "may" indicates authorization to take action.

H. Captions, headings and sub-headings, as used herein, are for convenience only and have no legal or dispositive effect.

IN WITNESS WHEREOF, SIMON L. BERNSTEIN, Trustor, has set his Hand and Seal the 17<sup>th</sup> day of July, 2008, and WILMINGTON TRUST COMPANY, Trustee, has caused this agreement to be signed in its name by one of its Vice Presidents and its corporate seal to be affixed by one of its Assistant Secretaries, the \_\_\_\_\_ day of \_\_\_\_\_, 2008, all done in duplicate as of the date of execution by Trustor, which date shall be the effective date of this instrument.

WITNESS: 

 (SEAL)  
SIMON L. BERNSTEIN, Trustor

WILMINGTON TRUST COMPANY, Trustee

By: \_\_\_\_\_  
Vice President

Attest: \_\_\_\_\_  
Assistant Secretary

TESCHER & SPALLINA, P.A.

STATE OF FLORIDA )  
 ) SS.  
COUNTY OF PALM BEACH )

The foregoing instrument was acknowledged before me this <sup>en</sup> 12<sup>th</sup> day of May, 2008, by SIMON L. BERNSTEIN.

NOTARY PUBLIC-STATE OF FLORIDA  
Kimberly Moran  
Commission # DB766479  
Expires: APR. 28, 2012  
Notary Public  
BORDER TOWN ATLANTIC DORSETT CO., INC.  
*Kimberly Moran*

STATE OF DELAWARE )  
 ) SS.  
COUNTY OF NEW CASTLE )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_, a Vice President of Wilmington Trust Company, a Delaware corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

**"SCHEDULE A"**

**Consisting of One Page**

**of**

**SIMON L. BERNSTEIN**

**Irrevocable Trust Agreement**

**Dated May 20, 2008**

**Between**

**SIMON L. BERNSTEIN**

**and**

**WILMINGTON TRUST COMPANY**

\* \* \*

**CASH in the amount of One Dollar (\$1.00)**

\* \* \*

\*

**TESCHER & <sup>11</sup>SPALLINA, P.A.**

TEXT OF PAM'S NOTES 1 & 2

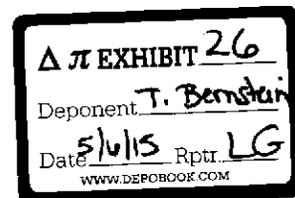
January 2012

Dear Dad,

Please read the attached letter and information. I am hopeful that you truly just don't know how much cutting me, Scoot [David Simon, Esq. proper name], Molly and Ted's family out of your will hurts us. It has nothing to do with money. In fact, I think you need to take care of ELIOT, using a trustee, first and foremost.

The act of disinheriting a child is unheard of and unimaginable. It is outrageous and considered psychologically violent. I am hopeful you are not aware of this and that you will make the changes necessary.  
Love Pam

TS006299



TS009006L

January 2012 |

Dear Dad:

Please read the attached  
letter and inform me how I am  
expected that you truly just  
don't know how much sitting  
me, Scott, Mickey, and Ted's  
family out of your will hurts  
US. It has nothing to do with  
money. In fact, I think you need

TS006301

---

to take care of E/inf, using a healthy  
First and foremost:  
Threat of dismembering a child's  
wound of and unmanageable. It is  
cynical and considered psychologically  
violent. I am hopeful you are not  
aware of this and that you will  
make the changes necessary.

Love,



01/31/2013 12:06 5618883183

CENTRALRECORDS

#2517 P.003/004

Page 2 of 3

CASE NO. 12121312 PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 2  
OFFENSE REPORT CASE NO. 12121312  
DISPOSITION: ZULU

ON 9/13/12 AT 1211 HOURS, I RESPONDED TO 7020 LYONS HEAD LANE, UNINCORPORATED BOCA RATON, FL., AND MET WITH TED BERNSTEIN AND HIS SISTER AND BROTHER, LISA FRIEDSTEIN AND ELLIOT BERNSTEIN, IN REFERENCE TO A POLICE ASSIST. TED ADVISED HIS FATHER, SIMON BERNSTEIN WAS TAKEN TO DELRAY COMMUNITY HOSPITAL AT 1000 HOURS ON 9/12/12 AND PASSED AWAY AT 0100 HOURS ON 9/13/12. HE EXPLAINED WHILE AT THE HOSPITAL HE WAS ADVISED BY SIMON'S CARETAKER, RACHEL WALKER THAT SIMON'S LIVE-IN GIRLFRIEND, MARITZA PUCCIO MIGHT HAVE PROVIDED SIMON WITH A LARGER THEN PRESCRIBED DOSE OF HIS MEDICATION AS WELL AS ONE OF HER PRESCRIBED SLEEPING PILLS, WHICH COULD OF CAUSED HIS DEATH. HE SAID HE VOICED HIS CONCERNS TO THE DOCTORS AT DELRAY COMMUNITY HOSPITAL BUT THEY ADVISED THERE DID NOT APPEAR TO BE ANY SUSPICIOUS CIRCUMSTANCES SURROUNDING SIMON'S DEATH AND THEY WOULD NOT BE CONDUCTING AN AUTOPSY. TED CONTACTED BOTH A PRIVATE COMPANY AND THE PALM BEACH COUNTY MEDICAL EXAMINER'S OFFICE REGARDING HAVING AN AUTOPSY CONDUCTED. BOTH ADVISED HE SHOULD CONTACT THE PALM BEACH COUNTY SHERIFF'S OFFICE.

AFTER SPEAKING WITH TED, I SPOKE WITH RACHEL. RACHEL STARTED BY TELLING ME THAT SIMON SUFFERED FROM SEVERAL AILMENTS TO INCLUDE, AND HE HAD APPROXIMATELY 2 YEARS AGO, WHICH WAS ONE OF SEVERAL SIMON WAS RECENTLY PLACED ON FOR THE WHICH SHE SAID EFFECTED HIS MENTAL FACULTIES. RACHEL ADVISED WHEN SHE ARRIVED AT SIMON'S HOUSE AT 0830 HOURS ON 9/12/12, SHE FOUND SIMON LYING ON THE COUCH IN THE LIVING ROOM. HE WAS AWAKE AND BREATHING BUT HE HAD A VERY LOW HEART BEAT AND WAS UNAWARE OF HIS SURROUNDINGS. RACHEL SAID SHORTLY AFTER HER ARRIVAL MARITZA RETURNED HOME. THEY HAD A BRIEF ARGUMENT OVER WHETHER OR NOT THEY SHOULD BRING SIMON TO THE HOSPITAL AS RACHEL SAYS MARITZA DID NOT BELIEVE HE NEEDED TO GO TO THE HOSPITAL AT THIS TIME. RACHEL SAID THAT SHE FINALLY TOLD MARITZA THAT SHE WAS GOING TO TAKE HIM TO THE HOSPITAL BY HERSELF. SHE SAID SHE LEFT THE HOUSE APPROXIMATELY 1000 HOURS FOR THE HOSPITAL. RACHEL WENT ON TO TELL ME THAT MARITZA PROVIDED SIMON WITH ONE OF HER PRESCRIBED SLEEPING PILLS ON THE NIGHT OF 9/8/12. SHE ALSO SAID SIMON WAS PRESCRIBED 100 PILLS ON 9/7/12 AND SHE BELIEVE THAT MARITZA WAS PROVIDING SIMON WITH LARGER THEN PRESCRIBED DOSES OF . RACHEL TOLD ME SHE BELIEVED THERE WERE ONLY 30 PILLS LEFT IN THE BOTTLE AT THE TIME OF SIMON'S DEATH. I LATER COUNTED THE BOTTLE OF . THERE WERE 90.5 PILLS IN THE

printed by Employee Id #: 9285 on January 31, 2013 12:03:53PM

Δ π EXHIBIT A  
Deponent: T. Bernstein  
Date: 5/1/13 Rpt. LG  
WWW.DEPOBOOK.COM

The Law Offices

of

**PETER M. FEAMAN, P.A.**  
Strategic Counselors. Proven Advocates.™

Peter M. Feaman, Esq.  
Nancy E. Guffey, Esq.  
Jeffrey T. Royer, Esq.  
Paula S. Marra, Esq. of Counsel



www.FeamanLaw.com

3695 W. Boynton Beach Blvd.  
Suite 9  
Boynton Beach, FL 33436  
Telephone: 561-734-5552  
Facsimile: 561-734-5554

August 26, 2016

Via Federal Express

Honorable John L. Phillips  
NORTH COUNTY COURTHOUSE  
3188 PGA Boulevard, Room 1414  
Palm Beach Gardens, FL 33410

**Re: Estate of Simon L. Bernstein; Case No.: 502012CP004391XXXXNB (IH)**

Dear Judge Phillips:

With regard to *Trustee's Motion to Approve Retention of Counsel and, to Appoint Ted S. Bernstein as Administrator Ad Litem to Defend Claim against Estate by William Stansbury*, set for hearing on **September 1, 2016 at 8:30 a.m.**, enclosed please find the following documentation:

1. Notice of Hearing;
2. Trustee's Motion to Approve Retention of Counsel and, to Appoint Ted S. Bernstein as Administrator Ad Litem to Defend Claim against Estate by William Stansbury;
3. Objection to Trustee's Motion to Appoint Ted Bernstein as Administrator Ad Litem to Defend Claim Against Estate by William Stansbury; and,
4. Case law, Florida Statutes and Probate Code cited in the above-listed Objection:
  - A. *Funchess v. Gulf Stream Apartments of Broward County, Inc.*, 611 So.2d 43 (Fla. 4<sup>th</sup> DCA 1993);
  - B. *Arzuman v. Estate of Prince Bander BIN Saud Bin, etc.*, 879 So.2d 675 (Fla. 4<sup>th</sup> DCA 2004);
  - C. *Montgomery v. Cribb*, 484 So.2d 73 (Fla. 2d DCA 1986);
  - D. *Estate of Bell v. Johnson*, 573 So.2d 57 (Fla. 1<sup>st</sup> DCA, 1990)
  - E. §731.201(23), Fla. Stat. (2013);
  - F. §733.602(1), Fla. Stat. (2013); and,
  - G. Fla. Prob. R. 5.440.

*Honorable John L. Phillips*

*Re: In Re: Estate of Simon L. Bernstein*

*Case No. 502012CP004391XXXXNB (IH)*

August 26, 2016

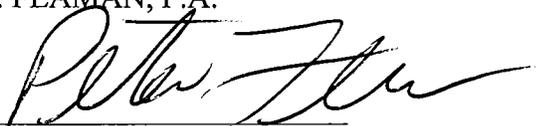
Page 2 of 2

---

Thank you for your consideration of this matter.

Respectfully submitted,  
PETER M. FEAMAN, P.A.

By: \_\_\_\_\_

  
Peter M. Feaman

PMF/tr

Enclosures

cc: Alan Rose, Esq. (via email w/enclosures)  
Brian O'Connell, Esq. (via email w/enclosures)  
Gary R. Shendell, Esq. (via email w/enclosures)  
Diana Lewis, Esq. (via email w/enclosures)  
Eliot Bernstein (via email w/enclosures)  
Jeffrey Friedstein and Lisa Friedstein (via email w/enclosures)  
Pamela Beth Simon (via email w/enclosures)

**1**

Filing # 45586301 E-Filed 08/23/2016 04:13:45 PM

IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT, IN AND  
FOR PALM BEACH COUNTY, FLORIDA.

IN RE:

CASE NO. 502012CP004391XXXXNBIH

ESTATE OF SIMON L. BERNSTEIN,  
\_\_\_\_\_ /

**NOTICE OF HEARING**

*Uniform Motion Calendar*

YOU ARE HEREBY NOTIFIED that the undersigned has called up for a hearing on the following:

**DATE:** Thursday, September 1, 2016

**TIME:** 8:30 a.m.

**JUDGE:** Honorable John L. Phillips

**PLACE:** Palm Beach North County Courthouse, 3188 PGA Blvd., Courtroom 3, Palm Beach Gardens, FL 33410

**MATTER(S) TO BE HEARD:**

**TRUSTEE'S MOTION TO APPROVE AGREEMENT BETWEEN TED S. BERNSTEIN, TRUSTEE, AND BRIAN O'CONNELL, AS PR OF THE ESTATE OF SIMON BERNSTEIN, REGARDING THE ESTATE'S PERSONAL PROPERTY SOLD WITH TRUST'S REAL ESTATE**

**TRUSTEE'S MOTION TO APPROVE RETENTION OF COUNSEL AND, TO APPOINT TED S. BERNSTEIN AS ADMINISTRATOR *AD LITEM* TO DEFEND CLAIM AGAINST ESTATE BY WILLIAM STANSBURY**

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by:  Facsimile U.S. Mail;  U.S. Mail;  E-mail Electronic Transmission;  FedEx;  Hand Delivery this 23<sup>rd</sup> day of August, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,  
THOMAS & WEISS, P.A.  
505 South Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
(561) 655-2250 Telephone | (561) 655-5537 Facsimile  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)  
Secondary: [mchandler@mrachek-law.com](mailto:mchandler@mrachek-law.com)  
*Attorneys for Ted S. Bernstein*

By: /s/ Alan B. Rose  
Alan B. Rose (Fla. Bar No. 961825)

**SERVICE LIST** - CASE NO. 502012CP004391XXXXNBIJH

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
Email: ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv))

John P. Morrissey, Esq.  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
(561) 833-0766 - Telephone  
Email: John P. Morrissey  
([john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com))  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Pamela Beth Simon  
303 E. Wacker Drive, Suite 2725  
Chicago, IL 60601  
Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

Lisa Friedstein  
2142 Churchill Lane  
Highland Park, IL 60035  
[lisa@friedsteins.com](mailto:lisa@friedsteins.com)  
Individually and as trustee for her children, and  
as natural guardian for M.F. and C.F., Minors

Jill Iantoni  
2101 Magnolia Lane  
Highland Park, IL 60035  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)  
Individually and as trustee for her children, and  
as natural guardian for J.I. a minor

Max Friedstein  
2142 Churchhill Lane  
Highland Park, IL 60035

Peter M. Feaman, Esq.  
Peter M. Feaman, P.A.  
3695 West Boynton Beach Blvd., Suite 9  
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Email: [service@feamanlaw.com](mailto:service@feamanlaw.com);  
[mkoskey@feamanlaw.com](mailto:mkoskey@feamanlaw.com)  
Counsel for William Stansbury

Gary R. Shendell, Esq.  
Kenneth S. Pollock, Esq.  
Matthew A. Tornincasa, Esq.  
Shendell & Pollock, P.L.  
2700 N. Military Trail, Suite 150  
Boca Raton, FL 33431  
(561) 241-2323 - Telephone  
Email: [gary@shendellpollock.com](mailto:gary@shendellpollock.com)  
[ken@shendellpollock.com](mailto:ken@shendellpollock.com)  
[matt@shendellpollock.com](mailto:matt@shendellpollock.com)  
[estella@shendellpollock.com](mailto:estella@shendellpollock.com)  
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Joielle A. Foglietta, Esq.  
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515 N. Flagler Dr., 20th Floor  
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561-832-5900 - Telephone  
Email: [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com);  
[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com);  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

Administrative Order No. 2.207-9/12

**"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Germaine English, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711."**

### **SPANISH**

**Si usted es una persona minusvalida que necesita algun acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Germaine English, 205 N. Dixie Highway, West Palm Beach, Florida, 33401; teléfono numero (561) 355-4380, por lo menos 7 dias antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente despues de recibir esta notificacion si el tiempo antes de la comparecencia que se ha programado es menos de 7 dias; si usted tiene discapacitacion del oido o de la voz, llame al 711.**

### **CREOLE**

**Si ou sè youn moun ki enfim, ki bézwen akomodasyon pou w ka patisipe nan powosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kek ed. Tanpri kontakte Germaine English, koodonate pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan, 205 North Dixie Highway, West Palm Beach, Florida 33401; telefonn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou paret nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si le ou gen pou w paret nan tribinal la mwens ke 7 jou; si ou gen pwoblem pou w tande oubyen pale, rele 711.**

**2**

Filing # 44877594 E-Filed 08/05/2016 11:59:56 AM

IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT, IN AND  
FOR PALM BEACH COUNTY, FLORIDA.

CASE NO. 502012CP004391XXXXNB-IH  
Probate – Judge John L. Phillips

IN RE:

ESTATE OF SIMON L. BERNSTEIN,  
  
\_\_\_\_\_ /

**TRUSTEE'S MOTION TO APPROVE RETENTION OF COUNSEL AND, TO APPOINT  
TED S. BERNSTEIN AS ADMINISTRATOR AD LITEM TO DEFEND CLAIM  
AGAINST ESTATE BY WILLIAM STANSBURY**

Ted S. Bernstein, Successor Trustee of the Simon Bernstein Amended and Restated Trust Agreement dated July 25, 2012 ("Simon's Trustee"), moves the Court to approve the retention of the law firm Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. ("Mrachek-Law") as counsel to defend the Estate in an independent action brought by William Stansbury, and to appoint Ted Bernstein as Administrator Ad Litem to defend the claim against the estate by William Stansbury and states:

1. Claimant, William Stansbury, has sued the Estate of Simon Bernstein for more than \$2.5 million, a claim which vastly exceeds the value of all of the current assets and potential recoveries by the Estate in third party litigation. The Estate attempted to resolve Stansbury's claim in good faith at mediation, but was unable to reach agreement with Stansbury during the mediation and does not believe it is likely that the claim can be settled. In light of that, the Estate must vigorously defend the claim.

2. Stansbury's claim relates to his business relationship with the decedent, Simon Bernstein, through an entity known as Life Insurance Concepts, Inc. ("LIC"). That entity was a closely-held corporation owned primarily by Simon Bernstein and Ted Bernstein, with Stansbury

at one time owning 10% of non-voting stock. LIC was operated and managed by Simon Bernstein and Ted Bernstein, who had sole voting rights, and served on the Board of Directors.

3. Stansbury's claim arises from his employment by and ownership interest in LIC. Before Simon died, Stansbury sued Simon Bernstein, Ted Bernstein, LIC, and various subsidiaries of LIC, asserting a variety of claims. The Complaint was filed on July 30, 2012. Simon Bernstein died 45 days after the Complaint was filed, before any responsive pleading or motion to dismiss was filed. A suggestion of death was filed.

4. LIC actively defended and litigated against Stansbury's claim, and pursued a counterclaim against Stansbury, under the direction of Ted Bernstein. During this litigation, Ted Bernstein was the primary client contact for the defense of the claim for approximately two years before Stansbury settled his differences with LIC. Along the way, Stansbury also asserted a claim against The Shirley Bernstein Trust, which Ted Bernstein as Trustee defended.

5. LIC and the other defendants initially hired Greenberg Traurig. In April, 2013, LIC and Ted Bernstein retained Mrachek-Law, which formally appeared on April 12, 2013. Shortly thereafter, Stansbury served summonses on the co-PRs of Simon's Estate, and the Estate retained Mark Manceri as its counsel.

6. Alan Rose of Mrachek-Law served as lead counsel for LIC, Ted Bernstein, and The Shirley Bernstein Trust, and coordinated the defense work with the co-PRs and Mr. Manceri, taking the lead role in the discovery, depositions, and court hearings. Specifically, for more than a year until the claims against LIC, Ted Bernstein, and Shirley Bernstein Trust were settled, Mrachek-Law handled the production of substantial business records; interviewed witnesses; coordinated the defense strategy with Ted Bernstein and counsel for the Estate; and worked with LIC's accountants

and professionals in preparing the defense of the claims. As a result of that work, Mrachek-Law is familiar with the facts, circumstances, and events, and is prepared to represent this Estate if hired.

7. As a result of his involvement as a founder and a shareholder of LIC, and his participation in this litigation for approximately two years, Ted Bernstein is fully familiar with the issues in the case, the nature of the claims, the relevant documents, and has firsthand knowledge of certain of the facts. As Successor Trustee of the Simon Bernstein Trust, Ted Bernstein has a substantial and direct interest in seeing that the claim of Stansbury is properly defended and ultimately defeated. He has conferred with the beneficiaries of The Simon Bernstein Trust, including the Guardian *Ad Litem*, and all are in favor of Ted Bernstein directing the defense of the claim through the Mrachek-Law firm.

8. In contrast, and through no fault of his own, Brian O'Connell, successor PR of the estate has more limited knowledge of the factual and legal underpinnings of Stansbury's claim and LIC. Neither Mr. O'Connell nor his law firm has ever done work for Simon Bernstein (while alive) or LIC; they never worked for, at or with LIC; they never met Simon Bernstein; and they have no firsthand personal knowledge of any facts relevant to the case.

9. Accordingly, and having conferred with the Trustee and the beneficiaries of the Trust, Mr. O'Connell has agreed to have Mrachek-Law retained to represent the Estate in the Stansbury litigation so long as the Court appoints Ted Bernstein as Administrator *Ad Litem* to stand as the Estate's representative in defending and protecting the estate's interests in the Stansbury litigation. Although the estate will be responsible for the reasonable costs and attorneys' fees incurred by Mrachek-Law in defending the claim (as it would regardless of which law firm was retained), Ted Bernstein has agreed to serve as Administrator *Ad Litem* for no additional fee. In other words, there

will be no fee for the time Ted Bernstein expends working on the defense of the independent action by Stansbury against the estate, whereas there might be some additional expense incurred were Brian O'Connell forced to assume that role. The reasonable fees and costs relating to the defense of Simon's claim, and the eventual pursuit of attorneys' fees awards against Stansbury, will be paid by the Estate.

10. Thus, this plan will result in some significant savings to the Estate due to (a) Mrachek-Law's prior knowledge and involvement; and (b) Ted Bernstein's prior knowledge and involvement, and his willingness to serve for no additional fee.

11. For the foregoing reasons, Ted Bernstein believes it is in the best interests of the estate to retain the Mrachek-Law firm, rather than some other law firm which has no prior knowledge or involvement in this matter. The Trustee believes the granting of this motion will result in an overall reduced cost to defend the claim; will employ attorneys skilled in commercial litigation who happen to be very familiar already with the facts, circumstances, events, and documents relating to Stansbury's claim. As indicated above, the Trustee has conferred with not only Mr. O'Connell, but each of the beneficiaries of the Trust, which is the sole beneficiary of the estate, and all are in agreement.

WHEREFORE, Ted S. Bernstein respectfully requests that this Court enter an order approving the retention of Mrachek-Law to defend the Stansbury independent action and appointing Ted S. Bernstein as Administration *Ad Litem* to oversee the estate's defense.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached

Service List by:  Facsimile **and** U.S. Mail;  U.S. Mail;  E-mail Electronic Transmission;   
FedEx;  Hand Delivery this 5th day of August, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,  
THOMAS & WEISS, P.A.  
505 South Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
(561) 655-2250 Telephone | (561) 655-5537 Facsimile  
email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com); [mchandler@mrachek-law.com](mailto:mchandler@mrachek-law.com)  
Attorneys for Ted S. Bernstein

By: /s/ Alan B. Rose  
Alan B. Rose (Fla. Bar No. 961825)

**SERVICE LIST**

**SERVICE LIST - CASE NO. 502012CP004391XXXXNBIJH**

Eliot Bernstein  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: Eliot I. Bernstein ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv))

John P. Morrissey, Esq.  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
(561) 833-0766 - Telephone  
(561) 833-0867 - Facsimile  
Email: John P. Morrissey  
([john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com))  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Pamela Beth Simon  
303 E. Wacker Drive, Suite 2725  
Chicago, IL 60601  
Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

Lisa Friedstein  
2142 Churchill Lane  
Highland Park, IL 60035  
[lisa@friedsteins.com](mailto:lisa@friedsteins.com)  
Individually and as trustee for her children, and  
as natural guardian for M.F. and C.F., Minors

Peter M. Feaman, Esq.  
Peter M. Feaman, P.A.  
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Eliot Bernstein's minor children,  
Jo.B., Ja.B., and D.B.

Jill Iantoni  
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[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)  
Individually and as trustee for her children, and  
as natural guardian for J.I. a minor

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**3**

Filing # 45525929 E-Filed 08/22/2016 04:15:49 PM

IN THE CIRCUIT COURT OF THE FIFTEENTH  
JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR  
PALM BEACH COUNTY, FLORIDA

IN RE: Case No. 50 2012 CP 004391 NB

ESTATE OF SIMON  
BERNSTEIN,  
Deceased.

\_\_\_\_\_ /

**OBJECTION TO TRUSTEE'S MOTION TO APPOINT  
TED S. BERNSTEIN AS ADMINISTRATOR *AD LITEM*  
TO DEFEND CLAIM AGAINST ESTATE BY WILLIAM STANSBURY**

COMES NOW Interested Person, William Stansbury, by and through his undersigned counsel and objects to Trustee's Motion to Appoint Ted S. Bernstein as Administrator *Ad Litem* to Defend His Claim Against Estate of Simon L. Bernstein, and as grounds therefor would show unto the Court as follows:

**I. Stansbury has standing to assert this Objection.**

Florida law provides that an administrator ad litem is akin to a personal representative, with the same duties of neutrality and fidelity as a personal representative. *See Funchess v. Gulf Stream Apartments of Broward County, Inc.*, 611 So.2d 43 (Fla. 4<sup>th</sup> DCA 1993). When removal of a Personal Representative is at issue, Fla. Prob. R. 5.440 specifically provides that, "... **any interested person, by petition**, may commence a proceeding to remove a personal representative. ..." (emphasis added.) By logical extension an "interested person" would also have standing to object to the appointment of a particular individual as an administrator ad litem.

The provisions of §731.201(23), Fla. Stat. (2013) define an "interested person" as:

(23) "Interested person" means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved..."

Stansbury has filed a claim against the Estate of Simon Bernstein (the "Estate") and has sued the Estate in a separate lawsuit styled *William E. Stansbury v. Ted Bernstein, et al*, Case No. 50 2012 CA 013933 MB AA, Palm Beach County, Florida. Stansbury, as a claimant of the Estate, has an interest in ensuring that the individual appointed by the court to serve as administrator ad litem, if any is appointed at all, will be free of conflicts of interest and will act without bias and in the best interests of the claimants, creditors and devisees of the Estate.

The Fourth District Court of Appeal has recognized that a claimant to an estate is an "interested person" and has standing in a proceeding to approve the personal representative's final accounting and petition for discharge. See, *Arzumán v. Estate of Prince Bander BIN Saud Bin. etc.*, 879 So.2d 675 (Fla. 4<sup>th</sup> DCA 2004). See also, *Montgomery v. Cribb*, 484 So.2d 73 (Fla. 2d DCA 1986) (Wrongful death claimant was entitled to notice of hearing as an "interested person" under the probate code even though case was dismissed by trial court and disputed settlement was on appeal.) Stansbury is therefore an "interested person" as to the outcome of this proceeding which will determine whether Ted Bernstein should be appointed administrator ad litem.

**II. Ted Bernstein has Conflicts of Interest with the Estate which should preclude him from serving as Administrator Ad Litem. Ted Bernstein is a Plaintiff in a pending action where the Simon Bernstein Estate is a Defendant.**

At the time of Simon Bernstein's ("Simon") death, it was determined that there was a life insurance policy issued by Heritage Mutual Insurance Company ("Heritage") insuring his life. Simon was listed on the company records as the owner of the policy. Heritage represented that the death benefit was approximately \$1.7 million. Heritage records also indicated that on November 27, 1995 there was a beneficiary change for the policy to read: LaSalle National Trust N.A., primary beneficiary and Simon Bernstein Ins. Trust dated 6/21/1995, contingent beneficiary. It was determined by Heritage that the primary beneficiary (LaSalle) no longer had

an interest in the death benefit and the contingent beneficiary would be paid the proceeds. At the time of Simon Bernstein's death the trust document establishing this alleged trust was not and, to date, has not been found.

Supposedly the beneficiaries of the Insurance Trust were Ted Bernstein and his siblings, Lisa Sue Friedstein, Pamela Beth Simon, Jill Iantoni and Eliot Bernstein (the "Bernstein Children"). Whether or not they were, in fact, beneficiaries was just an "educated guess" by attorney Robert Spallina, who was counsel to the Bernstein Children. See e-mail correspondence from Spallina to the Bernstein Children dated October 23, 2012, attached as **Exhibit "1."** If the Insurance Trust is no longer in existence, is lost, or if the insurance proceeds are not properly payable to this alleged trust, the proceeds would be payable to the Simon Bernstein Estate under Florida law.

Because no trust document could be found, Heritage refused to pay the claim for the life insurance proceeds to anyone without a court order. The Insurance Trust then sued Heritage in the Circuit Court of Cook County, Illinois (the case was removed to Federal Court), styled *Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95 v. Heritage Union Life Insurance Company*, Case No. 13 CV 3643, United States District Court for the Northern District of Illinois (the "Insurance Litigation"). A copy of the Amended Complaint (the "Complaint") is attached as **Exhibit "2."** In paragraph 2 of the Complaint, the Plaintiff, the Insurance Trust, although apparently still lost, and requiring an "educated guess" to ascertain its beneficiaries, nonetheless also alleges that Ted Bernstein is the "trustee" of the Insurance Trust. No trust document exists establishing the continued existence of the Insurance Trust, let alone that Ted is the Trustee. As a result, the representation in the Complaint that he is the trustee of the missing trust appears false.

More importantly, Ted Bernstein, as the putative “trustee” of the purported insurance trust and Plaintiff in the Illinois Action, is actively pursuing litigation that is contrary to the best interests of the Estate which he now seeks to represent as Administrator Ad Litem. The Estate intervened in the Insurance Litigation to assert that it, not the Bernstein Children, is the proper beneficiary of the life insurance proceeds. (Interestingly, Ted Bernstein opposed the intervention of the Estate.) As such, the Estate is an adverse party to the Insurance Trust for which Ted Bernstein is identified as trustee. The Estate is now a Defendant where Ted Bernstein is a Plaintiff. Thus, Ted Bernstein is actively and directly litigating against the very Estate for which he now seeks to serve as a fiduciary. His Motion to be appointed Administrator Ad Litem should be denied on this basis alone.

It is also important for the Court to note that Ted Bernstein is the Successor Trustee of the Simon Bernstein Amended and Restated Trust Agreement Dated 7/25/2012 (the “Residuary Trust”). The Residuary Trust is the residuary legatee of the Estate, and its beneficiaries are the grandchildren of Simon Bernstein. As a result of Ted Bernstein’s prosecution of the Insurance Litigation, Ted is, on the one hand, seeking to deprive the Estate of \$1.7 million in life insurance proceeds, while at the same time he serves as Successor Trustee of the Residuary Trust which will be deprived of the life insurance proceeds if he, Ted, succeeds in the Insurance Litigation. The conflict of interest is obvious and should disqualify Ted Bernstein from serving in any fiduciary capacity in the Estate.

Section 733.602(1), Fla. Stat. (2013), expressly provides that “. . . A personal representative (which in this case would mean an administrator ad litem) shall use the authority conferred by this code, the authority in the will, if any, and the authority of any order of the court, **for the best interests of interested persons, including creditors.**” (emphasis added.) While the ultimate outcome of the adjudication of the issues surrounding the Heritage life

insurance proceeds is as yet unknown, what is clear is that Ted Bernstein has advocated, and continues to advocate a position that is contrary to the best interests of the Estate and its beneficiaries. These two conflicting and contrary positions between the interests of Ted Bernstein as a Plaintiff in the Insurance Litigation versus his duty as an Administrator Ad Litem to act in the best interests of the Estate, including the claimants, creditors and beneficiaries, renders Ted Bernstein unfit to serve as fiduciary. *See Estate of Bell v. Johnson*, 573 So.2d 57 (Fla. 1<sup>st</sup> DCA, 1990) (conflict between personal representative, in that capacity, and as power of attorney, necessitated removal as personal representative).

Finally, Ted Bernstein seeks to serve as Administrator Ad Litem to oversee the litigation between Stansbury and the Estate arising out of Stansbury's employment relationship with companies of which Ted Bernstein and Simon Bernstein were principle owners. Ted Bernstein is a key witness, if not the most important witness in the case, other than perhaps Stansbury. Ted Bernstein is conflicted in that, on the one hand, he seeks to serve as a fiduciary with respect to the management of the Stansbury litigation, but, on the other hand, as a key witness in the case, his testimony could contribute to an adverse result against the Estate, depending upon how the testimony is received by the trier of fact. This inherent conflict of interest should also serve to disqualify Ted Bernstein.

**III. It was Simon Bernstein's intent, both expressed and implied, that Ted Bernstein not serve in a fiduciary capacity in his Estate.**

The appointment of Ted Bernstein as Administrator Ad Litem for the Estate of Simon Bernstein conflicts with both the expressed intent and implied intent of the deceased, Simon Bernstein.

--- **The 2008 Testamentary Documents** ---

In 2008, Simon Bernstein prepared and executed his Last Will and Testament and his Revocable Trust. The designated Personal Representative under his 2008 Last Will and Testament was his wife, Shirley Bernstein and William Stansbury as Co-Personal Representatives, or either of them alone if the other was unable to serve. In his 2008 Trust, he designated himself as Trustee, and in the event a successor trustee was necessary, Shirley Bernstein and William Stansbury were appointed as Successor Co-Trustees, or either of them if the other was unable to serve. In the 2008 trust document, he specifically excluded Ted Bernstein by indicating that he was to be considered as having pre-deceased him:

Notwithstanding the foregoing [the definitions of “Children” and “Lineal Descendants”], as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children TUD S. BERNSTEIN (“*TED*”) and PAMELA B. SIMON (“*PAM*”) and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me. . . .

*See*, Simon L. Bernstein Trust Agreement dated May 20, 2008, Article III, Section E(1), page 7.

--- **The 2012 Last Will and Testament** ---

In 2012, Simon Bernstein revised and re-executed his Last Will and Testament (the “2012 Will”) and amended his 2008 Trust (the “2012 Trust”).

Even though Simon Bernstein could have appointed Ted Bernstein as his Personal Representative or as his Alternate Personal Representative under the 2012 Will, again he specifically chose not to. Rather, Simon Bernstein appointed Donald Tescher and Robert Spallina as Co-Personal Representatives of his Estate. When they were forced to resign, this Court appointed a Curator, Benjamin Brown, Esq. Even though Ted Bernstein filed a Motion to have himself appointed Curator or Administrator Ad Litem, the Court, through Judge Colin, denied his motion. *See* Order of Judge Colin dated February 19, 2014, **Exhibit “3”** attached.

Thereafter, when Curator Benjamin Brown passed away and a Successor Personal Representative was appointed, the Court again chose not to appoint Ted Bernstein, but instead appointed Brian O'Connell, Esq. who presently serves as Personal Representative. It is interesting that in this motion presently before the Court, the Movant is not the Personal Representative, Brian O'Connell, but rather Ted Bernstein, the Successor Trustee to the Trust.

--- The 2012 Trust ---

In 2012, Simon Bernstein also amended his Revocable Trust. Simon again specifically excluded Ted Bernstein, and he stated in even stronger language that Ted Bernstein should be considered as having predeceased him for all purposes of the Trust:

Notwithstanding the foregoing [the definitions of "Children" and "Lineal Descendants"], for all purposes of this Trust and dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL LANTONI and LISA FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012, Article III, Section E(1), page 6. (emphasis added)

A copy of the Trust is attached hereto as **Exhibit "4."** Obviously, Simon Bernstein did not want Ted Bernstein to ever serve in a fiduciary capacity in connection with his Estate and Trust matters.

**IV. Ted Bernstein has failed to provide a Trust accounting to the trust beneficiaries as required by statute.**

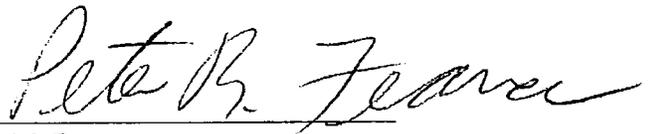
On or about January 14, 2014 Ted S. Bernstein became Successor Trustee of the Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012. He was appointed by the previously disgraced Trustees, Donald Tescher and Robert Spallina. Despite having been the Successor Trustee since January of 2014, Ted S. Bernstein has never prepared and submitted and accounting to the beneficiaries. This violates his general duty to inform and account to the

beneficiaries as required by Section 736.0183, Fla. Stat., and specifically his duty to provide at least an annual accounting as mandated by Section 736.0183(1)(d), Fla. Stat.

WHEREFORE, for all of the foregoing reasons, to wit:

1. Ted Bernstein has a conflict of interest with the Estate;
2. Simon Bernstein's expressed intent;
3. Ted Bernstein's failure to account as a Successor Trustee;

Interested Person to the Estate of Simon Bernstein, William Stansbury, requests this Honorable Court to deny the Motion of Ted Bernstein to be appointed Administrator Ad Litem.

  
Peter M. Feaman

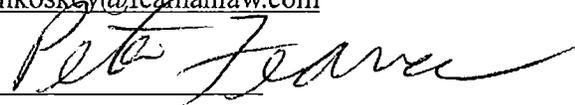
#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service through the Florida E-portal system to: Alan Rose, Esq., MRACHEK, FITZGERALD ROSE, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, [arose@pm-law.com](mailto:arose@pm-law.com) and [mchandler@pm-law.com](mailto:mchandler@pm-law.com); Diana Lewis, Esq., ADA & Mediations Services, LLC, 2765 Tecumseh Dr., West Palm Beach, FL 33409, [dzlewis@aol.com](mailto:dzlewis@aol.com); Eliot Bernstein, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv); Gary R. Shendell, Esq., Shendell & Pollock, P.L., 2700 N. Military Trail, suite 150, Boca Raton, FL 33431, [gary@shendellpollock.com](mailto:gary@shendellpollock.com); Brian O'Connell, Esq., Ciklin Lubitz Martens & O'Connell, 515 North Flagler Drive, 20<sup>th</sup> Floor, West Palm Beach, FL 33401, [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com); John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401, [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com); Lisa Friedstein, 2142 Churchill Lane, Highland Park, IL 60035,

Lisa@friedsteins.com; Jill Iantoni, 2101 Magnolia Lane, Highland Park, IL 60035,  
jilliantoni@gmail.com, on this 22<sup>nd</sup> day of August, 2016.

PETER M. FEAMAN, P.A.  
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By: \_\_\_\_\_

  
Peter M. Feaman

Florida Bar No. 0260347

## Eliot Bernstein

---

**Subject:** FW: Call with Robert Spallina tomorrow/Wednesday at 2pm EST

**From:** Robert Spallina [mailto:[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)]  
**Sent:** Tuesday, October 23, 2012 2:34 PM  
**To:** Jill Iantoni; Eliot Bernstein; Ted Bernstein; Ted Bernstein; Pamela Simon; Lisa Friedstein  
**Subject:** RE: Call with Robert Spallina tomorrow/Wednesday at 2pm EST

As discussed, I need the EIN application and will process the claim. Your father was the owner of the policy and we will need to prepare releases given the fact that we do not have the trust instrument and are making an educated guess that the beneficiaries are the five of you as a result of your mother predeceasing Si. Luckily we have a friendly carrier and they are willing to process the claim without a copy of the trust instrument. A call regarding this is not necessary. We have things under control and will get the claim processed expeditiously after we receive the form.

Thank you for your help.

Robert L. Spallina, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, Florida 33431  
Telephone: 561-997-7008  
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If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at [www.tescherspallina.com](http://www.tescherspallina.com)

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE )  
INSURANCE TRUST DTD 6/21/95, )  
by Ted S. Bernstein, its Trustee, Ted )  
Bernstein, an individual, )  
Pamela B. Simon, an individual, )  
Jill Iantoni, an individual and Lisa S. )  
Friedstein, an individual. )

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

----- )  
HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff )

v. )

SIMON BERNSTEIN IRREVOCABLE )  
TRUST DTD 6/21/95 )

Counter-Defendant )

and, )

FIRST ARLINGTON NATIONAL BANK )  
as Trustee of S.B. Lexington, Inc. Employee )  
Death Benefit Trust, UNITED BANK OF )  
ILLINOIS, BANK OF AMERICA, )  
Successor in interest to LaSalle National )  
Trust, N.A., SIMON BERNSTEIN TRUST, )  
N.A., TED BERNSTEIN, individually and )  
as purported Trustee of the Simon Bernstein )

Case No. 13 cv 3643  
Honorable Amy J. St. Eve  
Magistrate Mary M. Rowland



Irrevocable Insurance Trust Dtd 6/21/95,  
and ELIOT BERNSTEIN )

Third-Party Defendants. )

\_\_\_\_\_  
ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

v. )

TED BERNSTEIN, individually and )  
as alleged Trustee of the Simon Bernstein )  
Irrevocable Insurance Trust Dtd, 6/21/95 )

Cross-Defendant )

and, )

PAMELA B. SIMON, DAVID B.SIMON, )  
both Professionally and Personally )  
ADAM SIMON, both Professionally and )  
Personally, THE SIMON LAW FIRM, )  
TESCHER & SPALLINA, P.A., )  
DONALD TESCHER, both Professionally )  
and Personally, ROBERT SPALLINA, )  
both Professionally and Personally, )  
LISA FRIEDSTEIN, JILL IANTONI )  
S.B. LEXINGTON, INC. EMPLOYEE )  
DEATH BENEFIT TRUST, S.T.P. )  
ENTERPRISES, INC. S.B. LEXINGTON, )  
INC., NATIONAL SERVICE )  
ASSOCIATION (OF FLORIDA), )  
NATIONAL SERVICE ASSOCIATION )  
(OF ILLINOIS) AND JOHN AND JANE )  
DOES )

Third-Party Defendants. )

\_\_\_\_\_ )

Case: 1:13-cv-036 Document #: 66-1 Filed: 01/03/14 Page 4 of 12 PageID #:684

### PLAINTIFFS' FIRST AMENDED COMPLAINT

**NOW COMES** Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, and TED BERNSTEIN, as Trustee, (collectively referred to as "BERNSTEIN TRUST"), TED BERNSTEIN, individually, PAMELA B. SIMON, individually, JILL IANTONI, individually, and LISA FRIEDSTEIN, individually, by their attorney, Adam M. Simon, and complaining of Defendant, HERITAGE UNION LIFE INSURANCE COMPANY, ("HERITAGE") states as follows:

#### BACKGROUND

1. At all relevant times, the BERNSTEIN TRUST was a common law irrevocable life insurance trust established in Chicago, Illinois, by the settlor, Simon L. Bernstein, ("Simon Bernstein" or "insured") and was formed pursuant to the laws of the state of Illinois.
2. At all relevant times, the BERNSTEIN TRUST was a beneficiary of a life insurance policy insuring the life of Simon Bernstein, and issued by Capitol Bankers Life Insurance Company as policy number 1009208 (the "Policy").
3. Simon Bernstein's spouse, Shirley Bernstein, was named as the initial Trustee of the BERNSTEIN TRUST. Shirley Bernstein passed away on December 8, 2010, predeceasing Simon Bernstein.
4. The successor trustee, as set forth in the BERNSTEIN TRUST agreement is Ted Bernstein.
5. The beneficiaries of the BERNSTEIN TRUST as named in the BERNSTEIN TRUST Agreement are the children of Simon Bernstein.

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6. Simon Bernstein passed away on September 13, 2012, and is survived by five adult children whose names are Ted Bernstein, Pamela Simon, Eliot Bernstein, Jill Iantoni, and Lisa Friedstein. By this amendment, Ted Bernstein, Pamela Simon, Jill Iantoni and Lisa Friedstein are being added as co-Plaintiffs in their individual capacities.

7. Four out five of the adult children of Simon Bernstein, whom hold eighty percent of the beneficial interest of the BERNSTEIN TRUST have consented to having Ted Bernstein, as Trustee of the BERNSTEIN TRUST, prosecute the claims of the BERNSTEIN TRUST as to the Policy proceeds at issue.

8. Eliot Bernstein, the sole non-consenting adult child of Simon Bernstein, holds the remaining twenty percent of the beneficial interest in the BERNSTEIN TRUST, and is representing his own interests and has chosen to pursue his own purported claims, pro se, in this matter.

9. The Policy was originally purchased by the S.B. Lexington, Inc. 501(c)(9) VEBA Trust (the "VEBA") from Capitol Bankers Life Insurance Company ("CBLIC") and was delivered to the original owner in Chicago, Illinois on or about December 27, 1982.

10. At the time of the purchase of the Policy, S.B. Lexington, Inc., was an Illinois corporation owned, in whole or part, and controlled by Simon Bernstein.

11. At the time of purchase of the Policy, S.B. Lexington, Inc. was an insurance brokerage licensed in the state of Illinois, and Simon Bernstein was both a principal and an employee of S.B. Lexington, Inc.

12. At the time of issuance and delivery of the Policy, CBLIC was an insurance company licensed and doing business in the State of Illinois.

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13. HERITAGE subsequently assumed the Policy from CBLIC and thus became the successor to CBLIC as "Insurer" under the Policy and remained the insurer including at the time of Simon Bernstein's death.

14. In 1995, the VEBA, by and through LaSalle National Trust, N.A., as Trustee of the VEBA, executed a beneficiary change form naming LaSalle National Trust, N.A., as Trustee, as primary beneficiary of the Policy, and the BERNSTEIN TRUST as the contingent beneficiary.

15. On or about August 26, 1995, Simon Bernstein, in his capacity as member or auxiliary member of the VEBA, signed a VEBA Plan and Trust Beneficiary Designation form designating the BERNSTEIN TRUST as the "person(s) to receive at my death the Death Benefit stipulated in the S.B. Lexington, Inc. Employee Death Benefit and Trust and the Adoption Form adopted by the Employer".

16. The August 26, 1995 VEBA Plan and Trust Beneficiary Designation form signed by Simon Bernstein evidenced Simon Bernstein's intent that the beneficiary of the Policy proceeds was to be the BERNSTEIN TRUST.

17. S.B. Lexington, Inc. and the VEBA were voluntarily dissolved on or about April 3, 1998.

18. On or about the time of the dissolution of the VEBA in 1998, the Policy ownership was assigned and transferred from the VEBA to Simon Bernstein, individually.

19. From the time of Simon Bernstein's designation of the BERNSTEIN TRUST as the intended beneficiary of the Policy proceeds on August 26, 1995, no document was submitted by Simon Bernstein (or any other Policy owner) to the Insurer which evidenced any change in his intent that the BERNSTEIN TRUST was to receive the Policy proceeds upon his death.

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20. At the time of his death, Simon Bernstein was the owner of the Policy, and the BERNSTEIN TRUST was the sole surviving beneficiary of the Policy.

21. The insured under the Policy, Simon Bernstein, passed away on September 13, 2012, and on that date the Policy remained in force.

22. Following Simon Bernstein's death, the BERNSTEIN TRUST, by and through its counsel in Palm Beach County, FL, submitted a death claim to HERITAGE under the Policy including the insured's death certificate and other documentation.

### COUNT I

#### **BREACH OF CONTRACT**

23. Plaintiff, the BERNSTEIN TRUST, restates and realleges the allegations contained in ¶1-¶22 as if fully set forth as ¶23 of Count I.

24. The Policy, by its terms, obligates HERITAGE to pay the death benefits to the beneficiary of the Policy upon HERITAGE'S receipt of due proof of the insured's death.

25. HERITAGE breached its obligations under the Policy by refusing and failing to pay the Policy proceeds to the BERNSTEIN TRUST as beneficiary of the Policy despite HERITAGE'S receipt of due proof of the insured's death.

26. Despite the BERNSTEIN TRUST'S repeated demands and its initiation of a breach of contract claim, HERITAGE did not pay out the death benefits on the Policy to the BERNSTEIN TRUST instead it filed an action in interpleader and deposited the Policy proceeds with the Registry of the Court.

27. As a direct result of HERITAGE's refusal and failure to pay the Policy proceeds to the BERNSTEIN TRUST pursuant to the Policy, Plaintiff has been damaged in an amount equal to the death benefits of the Policy plus interest, an amount which exceeds \$1,000,000.00.

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WHEREFORE, PLAINTIFF, the BERNSTEIN TRUST prays for a judgment to be entered in its favor and against Defendant, HERITAGE, for the amount of the Policy proceeds on deposit with the Registry of the Court (an amount in excess of \$1,000,000.00) plus costs and reasonable attorneys' fees together with such further relief as this court may deem just and proper.

## COUNT II

### DECLARATORY JUDGMENT

28. Plaintiff, the BERNSTEIN TRUST, restates and realleges the allegations contained in ¶1-¶27 above as ¶28 of Count II and pleads in the alternative for a Declaratory Judgment.

29. On or about June 21, 1995, David Simon, an attorney and Simon Bernstein's son-in-law, met with Simon Bernstein before Simon Bernstein went to the law offices of Hopkins and Sutter in Chicago, Illinois to finalize and execute the BERNSTEIN TRUST Agreement.

30. After the meeting at Hopkins and Sutter, David B. Simon reviewed the final version of the BERNSTEIN TRUST Agreement and personally saw the final version of the BERNSTEIN TRUST Agreement containing Simon Bernstein's signature.

31. The final version of the BERNSTEIN TRUST Agreement named the children of Simon Bernstein as beneficiaries of the BERNSTEIN TRUST, and unsigned drafts of the BERNSTEIN TRUST Agreement confirm the same.

32. The final version of the BERNSTEIN TRUST Agreement named Shirley Bernstein, as Trustee, and named Ted Bernstein as, successor Trustee.

33. As set forth above, at the time of death of Simon Bernstein, the BERNSTEIN TRUST was the sole surviving beneficiary of the Policy.

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34. Following the death of Simon Bernstein, neither an executed original of the BERNSTEIN TRUST Agreement nor an executed copy could be located by Simon Bernstein's family members.

35. Neither an executed original nor an executed copy of the BERNSTEIN TRUST Agreement has been located after diligent searches conducted as follows:

- i) Ted Bernstein and other Bernstein family members of Simon Bernstein's home and business office;
- ii) the law offices of Tescher and Spallina, Simon Bernstein's counsel in Palm Beach County, Florida,
- iii) the offices of Foley and Lardner (successor to Hopkins and Sutter) in Chicago, IL; and
- iv) the offices of The Simon Law Firm.

36. As set forth above, Plaintiffs have provided HERITAGE with due proof of the death of Simon Bernstein which occurred on September 13, 2012.

WHEREFORE, PLAINTIFF, the BERNSTEIN TRUST prays for an Order entering a declaratory judgment as follows:

- a) declaring that the original BERNSTEIN TRUST was lost and after a diligent search cannot be located;
- b) declaring that the BERNSTEIN TRUST Agreement was executed and established by Simon Bernstein on or about June 21, 1995;
- c) declaring that the beneficiaries of the BERNSTEIN TRUST are the five children of Simon Bernstein;

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- d) declaring that Ted Bernstein, is authorized to act as Trustee of the BERNSTEIN TRUST because the initial trustee, Shirley Bernstein, predeceased Simon Bernstein;
- e) declaring that the BERNSTEIN TRUST is the sole surviving beneficiary of the Policy;
- f) declaring that the BERNSTEIN TRUST is entitled to the proceeds placed on deposit by HERITAGE with the Registry of the Court;
- g) ordering the Registry of the Court to release all of the proceeds on deposit to the BERNSTEIN TRUST; and
- h) for such other relief as this court may deem just and proper.

### COUNT III

#### RESULTING TRUST

37. Plaintiffs restate and reallege the allegations contained in ¶1-¶36 of Count II as ¶37 of Count III and plead, in the alternative, for imposition of a Resulting Trust.

38. Pleading in the alternative, the executed original of the BERNSTEIN TRUST Agreement has been lost and after a diligent search as detailed above by the executors, trustee and attorneys of Simon Bernstein's estate and by Ted Bernstein, and others, its whereabouts remain unknown.

39. Plaintiffs have presented HERITAGE with due proof of Simon Bernstein's death, and Plaintiff has provided unexecuted drafts of the BERNSTEIN TRUST Agreement to HERITAGE.

40. Plaintiffs have also provided HERITAGE with other evidence of the BERNSTEIN TRUST'S existence including a document signed by Simon Bernstein that designated the BERNSTEIN TRUST as the ultimate beneficiary of the Policy proceeds upon his death.

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41. At all relevant times and beginning on or about June 21, 1995, Simon Bernstein expressed his intent that (i) the BERNSTEIN TRUST was to be the ultimate beneficiary of the life insurance proceeds; and (ii) the beneficiaries of the BERNSTEIN TRUST were to be the children of Simon Bernstein.

42. Upon the death of Simon Bernstein, the right to the Policy proceeds immediately vested in the beneficiary of the Policy.

43. At the time of Simon Bernstein's death, the beneficiary of the Policy was the BERNSTEIN TRUST.

44. If an express trust cannot be established, then this court must enforce Simon Bernstein's intent that the BERNSTEIN TRUST be the beneficiary of the Policy; and therefore upon the death of Simon Bernstein the rights to the Policy proceeds immediately vested in a resulting trust in favor of the five children of Simon Bernstein.

45. Upon information and belief, Bank of America, N.A., as successor Trustee of the VEBA to LaSalle National Trust, N.A., has disclaimed any interest in the Policy.

46. In any case, the VEBA terminated in 1998 simultaneously with the dissolution of S.B. Lexington, Inc.

47. The primary beneficiary of the Policy named at the time of Simon Bernstein's death was LaSalle National Trust, N.A. as "Trustee" of the VEBA.

48. LaSalle National Trust, N.A., was the last acting Trustee of the VEBA and was named beneficiary of the Policy in its capacity as Trustee of the VEBA.

49. As set forth above, the VEBA no longer exists, and the ex-Trustee of the dissolved trust, and upon information and belief, Bank Of America, N.A., as successor to LaSalle National Trust, N.A. has disclaimed any interest in the Policy.

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50. As set forth herein, Plaintiff has established that it is immediately entitled to the life insurance proceeds HERITAGE deposited with the Registry of the Court.

51. Alternatively, by virtue of the facts alleged herein, HERITAGE held the Policy proceeds in a resulting trust for the benefit of the children of Simon Bernstein and since HERITAGE deposited the Policy proceeds the Registry, the Registry now holds the Policy proceeds in a resulting trust for the benefit of the children of Simon Bernstein.

WHEREFORE, PLAINTIFFS pray for an Order as follows:

- a) finding that the Registry of the Court holds the Policy Proceeds in a Resulting Trust for the benefit of the five children of Simon Bernstein, Ted Bernstein, Pamela Simon, Eliot Ivan Bernstein, Jill Iantoni and Lisa Friedstein; and
- b) ordering the Registry of the Court to release all the proceeds on deposit to the Bernstein Trust or alternatively as follows: 1) twenty percent to Ted Bernstein; 2) twenty percent to Pam Simon; 3) twenty percent to Eliot Ivan Bernstein; 4) twenty percent to Jill Iantoni; 5) twenty percent to Lisa Friedstein
- c) and for such other relief as this court may deem just and proper.

By: s/Adam M. Simon  
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Attorneys for Plaintiffs and Third-Party  
Defendants  
*Simon L. Bernstein Irrevocable Insurance Trust  
Dtd 6/21/95; Ted Bernstein as Trustee, and  
individually, Pamela Simon, Lisa Friedstein  
and Jill Iantoni*

IN THE CIRCUIT COURT OF THE FIFTEENTH  
JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR  
PALM BEACH COUNTY, FLORIDA

IN RE:

Case No.: 50 2012 CP 004391 SB  
**JUDGE MARTIN COLIN**

ESTATE OF SIMON  
BERNSTEIN,

Deceased.

Division: IY

**ORDER ON MOTION FOR APPOINTMENT  
OF CURATOR OR ADMINISTRATOR AD LITEM**

THIS MATTER came before this Court on Tuesday, February 18, 2014, upon the Motion for Appointment of Curator or Administrator Ad Litem, filed by Ted S. Bernstein, and the Court, having heard argument of counsel, and considered the evidence, it is

ORDERED AND ADJUDGED that:

DENIED, for the reasons  
stated on the record.

DONE and ORDERED in Delray Beach, Palm Beach County, Florida, this 19 day of  
February, 2014.

  
\_\_\_\_\_  
CIRCUIT COURT JUDGE

*Copies to:*

Alan Rose, Esq., PAGE, MRACHEK 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401;  
John J. Pankauski, Esq., PANKAUSKI LAW FIRM, 120 South Olive Avenue, Suite 701, West Palm Beach, FL 33401;  
Peter M. Feaman, Esq., PETER M. FEAMAN, P.A., 3615 Boynton Beach Blvd., Boynton Beach, Florida 33436.



7/25/2012

**SIMON L. BERNSTEIN**  
**AMENDED AND RESTATED TRUST AGREEMENT**

*Prepared by:*

Tescher & Spallina, P.A.  
4855 Technology Way, Suite 720, Boca Raton, Florida 33431  
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LAW OFFICES  
**TESCHER & SPALLINA, P.A.**

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SIMON L. BERNSTEIN

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AMENDED AND RESTATED TRUST AGREEMENT

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This Amended and Restated Trust Agreement is dated this 26 day of July, 2012, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, Florida and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "Trustee," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SIMON L. BERNSTEIN TRUST AGREEMENT (the "Trust Agreement," which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke said Trust Agreement, in whole or in part.

NOW, THEREFORE, I hereby amend and restate the Trust Agreement in its entirety and the Trustee accepts and agrees to perform its duties and obligations in accordance with the following amended provisions. Notwithstanding any deficiencies in execution or other issues in regard to whether any prior version of this Trust Agreement was a valid and binding agreement or otherwise created an effective trust, this amended and restated agreement shall constitute a valid, binding and effective trust agreement and shall amend and succeed all prior versions described above or otherwise predating this amended and restated Trust Agreement.

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. **Rights Reserved.** I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

B. **Payments During My Life.** If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare. Any income not so paid shall be added to principal.

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

LAW OFFICES  
TESCHER & SPALLINA, P.A.



C. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

## ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Disposition of Trust Upon My Death. Upon my death, the remaining assets in this trust shall be divided among and held in separate Trusts for my then living grandchildren. Each of my grandchildren for whom a separate trust is held hereunder shall hereinafter be referred to as a "*beneficiary*" with the separate Trusts to be administered as provided in Subparagraph 11.C.

C. Trusts for Beneficiaries. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the net income and principal of such beneficiary's trust as is proper for the Welfare of such individuals. Any income not so paid shall be added to principal each year. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any grandchild of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of any of my lineal descendants (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:



1. for his or her lineal descendants then living, *per stirpes*; or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

**D. Termination of Small Trust.** If at any time after my death in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

**E. Contingent Gift.** If at any time property of these Trusts is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if I had then owned such property and had then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

**F. Protective Provision.** No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

**G. Maximum Duration.** Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years after the date of creation of this Agreement, nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

### ARTICLE III. GENERAL

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

-3-

LAW OFFICES  
**TESCHER & SPALLINA, P.A.**



A. **Disability.** Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. **Timing of Income Distributions.** The Trustee shall make required payments of income at least quarterly.

C. **Substance Abuse.**

1. **In General.** If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended. In that event, the following provisions of this Subparagraph III.C will apply.

2. **Testing.** The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. **Treatment.** If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an



in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child*," "*children*," "*grandchild*," "*grandchildren*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children born of female lineal descendants, and (c) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is



raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

2. Code. "Code" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "Disabled" or being under "Disability" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "education" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. Needs and Welfare Distributions. Payments to be made for a person's "Needs" means payments necessary for such person's health (including lifetime residential or nursing home care), education, maintenance and support. Payments to be made for a person's "Welfare" means discretionary payments by the Trustee, from time to time, for such person's Needs and also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to



such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

6. Per Stirpes. In a division "*per stirpes*" each generation shall be represented and counted whether or not it has a living member.

7. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

8. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

a. the legal termination of the marriage to my descendant (whether before or after my death), or

b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

The trust will be administered as if that person had died upon the happening of the terminating event described above.

9. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such



Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

**H. Presumption of Survivorship.** If any person shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

**I. Governing Law.** This Agreement is governed by the law of the State of Florida.

**J. Other Beneficiary Designations.** Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

**K. Release of Medical Information.**

**1. Disability of Beneficiary.** Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries and myself if a beneficiary) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested



beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Ability to Amend or Revoke. The foregoing provisions of this paragraph shall not constitute a restriction on myself to amend or revoke the terms of this trust instrument under paragraph 1A hereof, provided I otherwise have legal capacity to do so.

4. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

#### ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any



decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.

4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole



proprietorship, or other form (all of which business entities and enterprises are referred to herein as "*Business Entities*"). I vest the Trustee with the following powers and authority in regard to Business Entities:

- a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;
- b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;
- c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;
- d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;
- e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;
- f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;
- g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;
- h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and
- i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.



11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided, unless otherwise provided in this instrument, the Trustee shall establish out of income and credit to principal reasonable reserves for depreciation, obsolescence and depletion, determined to be equitable and fair in accordance with some recognized reasonable and preferably uncomplicated trust accounting principle and; provided, further that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.



18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

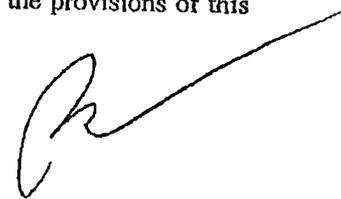
20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this



paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

26. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

27. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate.

28. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

29. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. Appointment of Successor Trustee.

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, ROBERT L. SPALLINA and DONALD R. TESCHER shall serve together as successor co-Trustees, or either of them alone as Trustee if either of them is unable to serve. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust



hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances provided that the foregoing appointments shall apply when and to the extent that no effective appointment is made below:

a. Trustee of Separate Trusts for My Grandchildren. Each grandchild of mine shall serve as co-Trustee with the immediate parent of such grandchild which parent is also a child of mine as to all separate trusts under which such grandchild is the sole current mandatory or discretionary income beneficiary upon attaining the age of twenty-five (25) years, and shall serve as sole Trustee of such trusts upon attaining the age of thirty-five (35) years. While serving alone as Trustee, a grandchild of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such grandchild and such grandchild may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

b. Trustee of Separate Trusts for My Lineal Descendants Other Than My Grandchildren. In regard to a separate trust held for a lineal descendant of mine other than a grandchild of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon attaining age twenty-five (25) years. While serving alone as Trustee, a lineal descendant of mine other than a grandchild of mine may designate a co-Trustee to serve with such lineal descendant and such lineal descendant may remove and/or replace such co-Trustee with another from time to time.

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

- a. The remaining Trustees, if any; otherwise,
- b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or



entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 35 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, other than a named Trustee or successor Trustee designated hereunder, or a Trustee appointed by me during my lifetime or under my Will or otherwise at the time of my death, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual

and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the



Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

**K. Third Parties.** No one dealing with the Trustee need inquire into its authority or its application of property.

**L. Merger of Trusts.** If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

**M. Multiple Trustees.** If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

#### ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

**A. GST Trusts.** I direct (a) that the Trustee shall divide any trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions hereof) so that the generation-skipping tax inclusion ratio of one such trust is zero, (b) any property exempt from generation-skipping taxation shall be divided as otherwise provided herein and held for the same persons



designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and issue, as such beneficiary may appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such Trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. For purposes of funding any pecuniary payment to which there is allocated any GST exemption, such payment shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this paragraph which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution or otherwise or is not reasonably available. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

**B. Individual Retirement Accounts.** In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

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LAW OFFICES  
**TESCHER & SPALLINA, P.A.**



1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Gift Transfers Made From Trust During My Lifetime. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. Recipients. The gifts may be made only to my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).



2. Trustee Limited. When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent (5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

E. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,
2. my funeral expenses without regard to legal limitations,
3. the expenses of administering my estate,
4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and
5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property."

SIMON I. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

-22-

LAW OFFICES  
TESCHER & SPALLINA, P.A.

F. Subchapter S Stock. Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

G. Residence as Homestead. I reserve the right to reside upon any real property placed in this trust as my permanent residence during my life, it being the intent of this provision to retain for myself the requisite beneficial interest and possessory right in and to such real property to comply with Section 196.041 of the Florida Statutes such that said beneficial interest and possessory right constitute in all respects "equitable title to real estate" as that term is used in Section 6, Article VII of the Constitution of the State of Florida. Notwithstanding anything contained in this trust to the contrary, for purposes of the homestead exemption under the laws of the State of Florida, my interest in any real property in which I reside pursuant to the provisions of this trust shall be deemed to be an interest in real property and not personalty and shall be deemed my homestead.

*[remainder of page intentionally left blank]*



IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:

*[Handwritten signature of Simon L. Bernstein]*

SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 21 day of July, 2012:

Print Name: ROBERT L. SPALLINA  
Address: 7387 WISTERIA AVENUE  
PARKLAND, FL 33076

*[Handwritten signature of Kimberly Moran]*  
Print Name: Kimberly Moran  
Address: 6362 Las Flores Drive  
Boca Raton, FL 33433

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 25 day of July, 2012, by SIMON L. BERNSTEIN.

*[Handwritten signature of Lindsay Baxley]*  
Signature - Notary Public - State of Florida  
Lindsay Baxley  
Print, type or stamp name of Notary Public

[Seal with Commission Expiration Date]

NOTARY PUBLIC - STATE OF FLORIDA  
Lindsay Baxley  
Commission # EE092282  
Expires: MAY 10, 2015  
BONDED THRU ATLANTIC BONDING CO., INC.

Personally Known \_\_\_\_\_ or Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

**4**

# EXHIBIT A

**Funchess v. Gulf Stream Apartments of Broward County, Inc., 611 So.2d 43 (1992)**

18 Fla. L. Weekly D92

611 So.2d 43  
District Court of Appeal of Florida,  
Fourth District.

Dareyl FUNCHESS, as personal representative of the estate of Samantha McHellon Funchess, deceased, on behalf of the estate and on behalf of the survivors of the decedent, to wit: Dareyl Funchess, surviving spouse; Lajuan Jamar Funchess, a minor; Samuel McHellon, a minor, Helen White and Donial McHellon, natural parents, Appellant,  
v.  
GULF STREAM APARTMENTS OF BROWARD COUNTY, INC., John V. Tinglof, Robert R. Tinglof and Iver A. Tinglof, Appellees.

No. 91-1716.

|

Dec. 23, 1992.

|

Rehearing and Rehearing En Banc Denied Jan. 25, 1993.

Wrongful death action was brought in name of personal representative of deceased. Administrator ad litem was substituted as plaintiff. Defendants moved to dismiss. The Circuit Court, Broward County, Patricia W. Cocalis, J., dismissed. Administrator appealed. The District Court of Appeal, Dell, J., held that administrator ad litem could maintain wrongful death action.

Reversed and remanded.

West Headnotes (2)

**[1] Executors and Administrators**

⇒ Authority and Duty in General

Administrator ad litem could maintain wrongful death action originally brought in name of personal representative; wrongful death statute provided for liberal construction and did not prohibit continuation of suit in name of administrator ad litem and defendants had not shown either prejudice or any meaningful distinction between authority

of administrator ad litem and personal representative to act as nominal plaintiff in wrongful death action. West's F.S.A. §§ 731.201(25), 733.308, 768.16, 768.20.

8 Cases that cite this headnote

**[2] Executors and Administrators**

⇒ Authority and Duty in General

Administrator ad litem must represent beneficiaries of estate with same degree of neutrality and fidelity as personal representative and administrator ad litem is also subject to supervision of appointing court.

2 Cases that cite this headnote

**Attorneys and Law Firms**

\*44 Edward A. Perse of Perse, P.A. & Ginsberg, P.A., and Ratiner & Glinn, P.A., Miami, for appellant.

Richard T. Woulfe and Peter R. Goldman of Bunnell, Woulfe & Keller, P.A., Fort Lauderdale, for appellees.

**Opinion**

DELL, Judge.

Appellant contends the trial court erred when it dismissed this action for the wrongful death of Samantha Funchess and entered judgment for appellees.<sup>1</sup> We agree and reverse and remand this cause for further proceedings.

The trial court's order neither contains findings nor states reasons for its dismissal of appellant's action. Appellant contends the trial court erred if it dismissed this action based upon the inability of an administrator ad litem to maintain a wrongful death action originally brought in the name of a personal representative. In the alternative, appellant contends the trial court abused its discretion if it dismissed this suit based upon appellant's failure to timely obtain the appointment of a personal representative.

**[1]** Appellant initially filed this wrongful death action in the name of a personal representative properly appointed by the probate division. The probate division thereafter

**Funchess v. Gulf Stream Apartments of Broward County, Inc., 611 So.2d 43 (1992)**

18 Fla. L. Weekly D92

removed the personal representative at the request of the decedent's mother and appointed John Spellacy as administrator ad litem of the estate. Appellees did not move to dismiss when the court appointed Spellacy as administrator ad litem. Only after Spellacy resigned and appellant failed to have a successor administrator ad litem appointed did appellees move to dismiss for lack of a personal representative.

Appellant argues an administrator ad litem may properly maintain a wrongful death action because the term "personal representative" encompasses the term "administrator ad litem". The wrongful death statute, \*45 section 768.18, Florida Statutes (1989), does not define the term "personal representative". However, section 731.201(25) provides:

"Personal representative" means the fiduciary appointed by the court to administer the estate and refers to what has been known as an administrator, administrator cum testamento annexo, administrator de bonis non, ancillary administrator, ancillary executor, or executor.

Section 733.308 provides the circumstances where a court must appoint an administrator ad litem:

When it is necessary that an estate be represented and there is no personal representative of the estate, the court shall appoint an administrator ad litem without bond for that particular proceeding.

Rule 5.120(a), Florida Rules of Probate and Guardianship, permits the appointment of an administrator ad litem in the following circumstances:

When it is necessary that the estate of a decedent ... be represented in any probate ... proceeding and there is no personal representative of the estate ..., or the personal representative ... is or may be interested adversely to the estate ..., or is enforcing his own debt or claim against the estate ..., or the necessity arises otherwise, the court may appoint an administrator ad

litem ... without bond or notice for that particular proceeding.

(emphasis added).

Appellant points out section 768.17, Florida Statutes (1989), provides the wrongful death statute "shall be liberally construed." Section 768.20 states in part:

The action shall be brought by the decedent's personal representative, who shall recover for the benefit of the decedent's survivors and estate all damages, as specified in this act, caused by the injury resulting in death.

The statute, therefore, requires a single action brought by a personal representative to recover damages for all beneficiaries under the act. By requiring the personal representative to bring a single action, the statute eliminates the potential for competing beneficiaries to race to judgment, preferential treatment of one or more beneficiaries in the disposition of their claims and, most significantly, multiple claims and lawsuits against the wrongdoer.

[2] An administrator ad litem must represent the beneficiaries of the estate with the same degree of neutrality and fidelity as a personal representative and an administrator ad litem is always subject to the supervision of the appointing court. The proceeds of any judgment recovered in the wrongful death action by an administrator ad litem would be protected and distributed as provided by the Probate Code. See *In re Estate of Cordiner*, 458 So.2d 418 (Fla. 2d DCA 1984); *Woolf v. Reed*, 389 So.2d 1026 (Fla. 3d DCA 1980). Furthermore, the substitution of an administrator ad litem would not affect appellees' exposure to multiple claims.

Appellees have not shown how they would suffer prejudice by the continuation of the action by the administrator ad litem nor have they shown any meaningful distinction between the authority of an administrator ad litem and a personal representative to act as a nominal plaintiff in a wrongful death action. Since the wrongful death statute provides for a liberal construction and does not prohibit the continuation of the suit in the name of an administrator ad litem, we hold the trial court erred

**Funchess v. Gulf Stream Apartments of Broward County, Inc., 611 So.2d 43 (1992)**

18 Fla. L. Weekly D92

when it dismissed the action for lack of a “personal representative”.

We also reject appellee's argument that the trial court's order of dismissal should be affirmed because appellant failed to timely have a personal representative appointed and substituted as plaintiff. On January 9, 1991, the trial court required appellant to have a personal representative appointed by January 14. The probate division appointed Randolph Potter as successor administrator ad litem on January 10 and appellant filed a motion to substitute Potter for Funchess as plaintiff on January 14.

We have held an administrator ad litem can maintain this action to final judgment. Therefore, if the trial court dismissed this cause for lack of a personal representative, it erred. On the other hand, if it dismissed \*46 this cause

as a sanction, the trial court relied upon an erroneous premise for its dismissal.

Accordingly, we reverse and remand this cause to the trial court with directions to vacate its judgment in favor of appellees and for further proceedings consistent with this opinion.

REVERSED and REMANDED.

HERSEY and STONE, JJ., concur.

**All Citations**

611 So.2d 43, 18 Fla. L. Weekly D92

**Footnotes**

1

The following summarizes the procedural history leading to the dismissal of appellant's action:

On January 26, 1989, Dareyl Funchess, nominal appellant, as personal representative of the estate of Samantha Funchess, his deceased wife, filed a wrongful death action against appellees, pursuant to section 768.16, Florida Statutes (1989). The decedent's mother petitioned for the removal of Dareyl Funchess as personal representative, and on June 19, 1989, the probate division entered an order which removed Dareyl Funchess as personal representative of the estate and appointed John Spellacy as administrator ad litem of the estate. On September 7, 1990, at Spellacy's request, the probate division entered an order discharging him as administrator ad litem.

On December 5, 1990, appellees moved to dismiss appellant's wrongful death action based upon the ground that the decedent's estate was no longer represented by Funchess or any other personal representative. On December 10, appellant moved to substitute Spellacy for Funchess as plaintiff. On January 9, 1991, the trial court entered an order on appellees' motion to dismiss which directed a personal representative shall be appointed by January 14, or the motion is granted and the action is dismissed. The next day, the probate division entered an order which noted its previous discharge of Spellacy as administrator ad litem and appointed Randolph Potter as successor administrator ad litem. On January 14, appellant filed a motion to substitute Potter for Funchess as plaintiff, and on January 29, the trial court entered an order substituting Potter as plaintiff.

On February 6, 1991, appellees moved to vacate the January 29 order claiming appellant obtained the order ex parte. On April 23, 1991, the trial court entered an order which vacated its January 29 order, granted appellees' motion to dismiss and dismissed appellant's action.

# **EXHIBIT B**

Arzuman v. Estate of Bin, 879 So.2d 675 (2004)

29 Fla. L. Weekly D1844

879 So.2d 675  
District Court of Appeal of Florida,  
Fourth District.

Mark P. ARZUMAN, a/k/a Mark  
P. Arzoumanian, Appellant,  
v.  
The ESTATE OF Prince Bander  
BIN Saud Bin, etc., Appellee.

No. 4D03-2406.

|  
Aug. 11, 2004.

### Synopsis

**Background:** Personal representative of estate filed petition for discharge and approval of final accounting. The Fifteenth Judicial Circuit Court, Palm Beach County, Gary L. Vonhof, J., issued final order granting petition. Claimant against estate appealed.

[**Holding:**] The District Court of Appeal, Klein, J., held that appeal was not timely.

Affirmed.

West Headnotes (2)

[1] **Executors and Administrators**

↳ Persons Entitled to Object

Claimant against estate was an "interested person" in proceedings to approve final accounting and discharge personal representative. West's F.S.A. § 731.201(21).

1 Cases that cite this headnote

[2] **Executors and Administrators**

↳ Perfection of Appeal and Effect Thereof

Time for claimant against estate to appeal order approving settlement of separate wrongful death action against estate began to run when trial court approved settlement,

rather than when trial court granted personal representative's motion to disburse funds, approve final accounting, and discharge personal representative; order approving settlement finally determined right of claimant in that it resulted in estate having no assets with which to pay his claim. West's F.S.A. R.App.P.Rule 9.110(a)(2).

1 Cases that cite this headnote

### Attorneys and Law Firms

\*675 Mark P. Arzuman, a/k/a Mark P. Arzoumanian, Boca Raton, pro se.

Lawrence Bunin of Lawrence Bunin, P.A., Plantation, for appellee.

### Opinion

KLEIN, J.

Appellant, a claimant against the appellee estate, appeals a final order granting the personal representative's motion to disburse funds, approve final accounting, and discharge personal representative. He argues that the trial court erred in approving the settlement of a wrongful death claim in which the estate was a plaintiff, but we conclude that this appeal is not timely as to the order approving the settlement, which was a final order.

\*676 The decedent died in an airplane accident, and the estate filed a negligence suit which was settled for a total of \$750,000. The settlement, which apportioned \$700,000 to decedent's mother and \$50,000 to the estate, was approved by the court. The low amount to the estate resulted from the fact that the decedent reported no income. The aviation lawyer who obtained the recovery testified that the estate had no recoverable damages. Claimant, who had a pending lawsuit against the estate, filed an appeal from the March 2002 order approving the settlement, but subsequently dismissed it.

In April 2003, the personal representative filed a petition for discharge and approval of final accounting, noting that claimant's lawsuit was still pending, but asserting that the estate would have no assets to pay any judgment claimant might obtain in the future. Following a hearing

**Arzuman v. Estate of Bin, 879 So.2d 675 (2004)**

29 Fla. L. Weekly D1844

the court granted the petition, finding that if claimant obtained a judgment, it would be a class 8 claim under section 733.707, Florida Statutes, and that, after paying expenses having a higher priority, the estate would have no funds remaining. It is this order, which was entered in May 2003, which claimant has appealed, but his primary argument is that the court erred in approving the wrongful death settlement a year earlier.

[1] The estate argues that claimant is not an “interested person” under section 731.201(21), Florida Statutes (2002), which defines interested person as:

any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved... The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.

The closest case is *Montgomery v. Cribb*, 484 So.2d 73 (Fla. 2d DCA 1986), in which a claimant's claim against an estate had been stricken, and the order striking the claim was on appeal. The second district held that the claimant was an interested party. We agree with that decision and conclude that claimant was an interested person.

[2] The estate next argues that claimant was required to appeal the order approving the settlement when it was entered. Final orders in probate proceedings are defined under rule 9.110(a)(2), as orders which “finally determine a right or obligation of an interested person as defined in the Florida Probate Code.”

We conclude that the order approving the settlement of the tort claim did “finally determine a right” of

this claimant. Section 733.708, Florida Statutes (2002), which addresses the compromise of lawsuits filed by estates, provides that the probate court may authorize the settlement “if satisfied that the compromise will be for the best interest of the interested persons,” and that an order authorizing settlement “shall relieve the personal representative of liability or responsibility for the compromise.”

In this case once the order approving the settlement became final, the personal representative was, by statute, absolved of further responsibility. The order approving the settlement accordingly did finally determine a right of the claimant in that it resulted in the estate having no assets with which to pay his claim.

We are of course aware that, when we decide that an appellant should have appealed an earlier order, it can result in \*677 grave consequences.<sup>1</sup> In probate cases, however, where the order of final discharge may not be entered for years after the opening of an estate, interim appeals of orders which finally determine rights or obligations are necessary for the orderly administration of the estate. If we were to review the order approving settlement at this late date, it is doubtful that any remedy would be available which would benefit claimant.

We have considered the issues which appellant has raised regarding the final order of discharge and find them to be without merit. Affirmed.

SHAHOOD, J., and EMAS, KEVIN M., Associate Judge, concur.

**All Citations**

879 So.2d 675, 29 Fla. L. Weekly D1844

**Footnotes**

1

Even if we had reviewed the order approving the settlement, we would have affirmed, because as we noted earlier, the estate had no damage recoverable in the wrongful death claim.

# EXHIBIT C

Montgomery v. Cribb, 484 So.2d 73 (1986)

11 Fla. L. Weekly 569

KeyCite Yellow Flag - Negative Treatment  
Distinguished by J.B. v. Florida Dept. of Children and Family  
Services, Fla., September 28, 2000

484 So.2d 73

District Court of Appeal of Florida,  
Second District.

William T. MONTGOMERY, as Personal  
Representative of the Estate of Kenneth  
W. Montgomery, deceased, Appellant,  
v.

Barbara CRIBB and Joseph A. Perez, as  
Co-Personal Representatives of the Estate  
of Vivian S. Perez, deceased, Appellees.

No. 85-1288.

March 5, 1986.

Personal representatives moved to strike claim against decedent's estate based on a summary judgment that had been entered in favor of estate in separate action. The Circuit Court, Highlands County, Dennis P. Maloney, J., did not rule on motion for continuance brought by claimant and entered an order granting personal representatives' motion to strike. The District Court of Appeal held that the court should not have ruled on motion to strike because claimant did not receive reasonable notice of hearing.

Reversed and remanded for consistent proceedings.

West Headnotes (4)

[1] **Executors and Administrators**

⇒ Findings and Decision

Trial court improperly ruled on personal representatives' motion to strike claim against the estate, where claimant received notice of hearing on motion to strike two days before the hearing was to be held and the trial court did not rule on claimant's motion for continuance which was based on his lack of reasonable notice of the hearing.

4 Cases that cite this headnote

[2] **Motions**

⇒ Service and Filing

Unless the court orders otherwise, every petition or motion for an order determining rights of an interested person shall be served on interested persons where "interested persons" are those who reasonably may be expected to be affected by the outcome of the particular proceeding. West's F.S.A. § 731.201(21).

Cases that cite this headnote

[3] **Executors and Administrators**

⇒ Proceedings

For a hearing on a motion to strike claim against estate based on summary judgment that had been entered, two day notice to claimant against whom the summary judgment was directed was not a reasonable length of time under West's F.S.A. R.P. & G.P Rule 5.042(c).

2 Cases that cite this headnote

[4] **Executors and Administrators**

⇒ Persons Who May Contest Claims

**Executors and Administrators**

⇒ Proceedings

Decedent's personal representatives were not privileged to proceed ex parte in a motion to strike claim against the estate based on summary judgment that had been entered in a separate action, and claimant was entitled to reasonable notice of the hearing as claimant remained an interested person in the proceeding because an appeal was pending on an issue pertaining to his claim against the estate.

1 Cases that cite this headnote

Montgomery v. Cribb, 484 So.2d 73 (1986)

11 Fla. L. Weekly 569

#### Attorneys and Law Firms

\*74 Carl J. Robie, III, Sarasota, for appellant.

Jon H. Anderson, Lakeland, for appellees.

#### Opinion

##### PER CURIAM.

Appellant, William Montgomery, seeks review of an order granting a motion to strike filed by appellees, Barbara Cribb and Joseph A. Perez, personal representatives of the estate of Vivian S. Perez. We reverse.

Vivian Perez died on December 15, 1982. Her will was admitted to probate and the court appointed Barbara Cribb and Joseph Perez as personal representatives of the estate. On September 26, 1983, Kenneth Montgomery, a minor, drowned in a swimming pool located on the Perez estate. His father, the appellant, filed a statement of claim against the estate for damages arising out of the allegedly wrongful death of his son. The appellees timely objected to appellant's statement of claim and the appellant filed a separate civil action. The appellees filed an answer and affirmative defenses alleging, among other things, that appellant had accepted an offer of settlement but had refused to arrange for the execution of an appropriate release. The appellees then filed a motion to enforce settlement and a motion for summary judgment.

In addition to the reasons set forth in the motion to enforce settlement, the motion for summary judgment sought relief on the basis that the sole cause of the son's death had been inadequate parental supervision, that appellant's son had not been an invitee, and that the attractive nuisance doctrine did not, as a matter of law, apply. The trial court found there existed no substantial issue as to any material fact and, on September 21, 1984, granted summary judgment in favor of the appellees. The appellant voluntarily dismissed an appeal of that order, apparently in consideration of \$5000 tendered by the appellees. He later obtained new counsel who, without success, attempted to set aside dismissal of the appeal.

On November 15, 1984, appellees filed a motion for supplemental relief stating they were ready to perform the settlement agreement by tendering \$5000 into the registry of the court. On March 5, 1985, the court granted the motion, thereby releasing appellees from further liability.

The appellant filed, on April 11, 1985, a notice of appeal of that order. Eleven days later, the appellees filed a motion to require appellant to return their tender of \$5000. Appellees alleged that in exchange for their tender of \$5000, appellant had dismissed his appeal of the final summary judgment, that appellant had subsequently engaged new counsel to appeal the order granting the motion for supplemental relief, that the appellant had disavowed the settlement agreement entered into by his former attorney, and that appellant therefore had no basis for retaining the \$5000. The appellant then filed a stipulation agreeing to return appellees' tender. On appeal, this court temporarily relinquished jurisdiction to the trial court for the parties to secure a final order as to the effect of appellant's release of tender. That appeal is still pending.

Meanwhile, appellees had filed, on April 22, 1985, a motion to strike appellant's claim against the estate based upon the summary judgment that had been entered. On April 23, 1985, appellant received notice that a hearing on the motion to strike would be held on April 25, 1985. Prior to the hearing, appellant filed a motion for continuance on the basis that he had not been given reasonable notice of the hearing. The trial court did not rule on appellant's motion for continuance, and following the hearing, entered an order granting appellees' motion to strike. Appellant has timely appealed that order.

[1] [2] Appellant contends that the court erred in ruling on the motion to strike because appellant did not receive reasonable \*75 notice of the hearing. We agree. Florida Rule of Probate and Guardianship 5.041(a), provides that unless the court orders otherwise, every petition or motion for an order determining rights of an interested person shall be served on interested persons. "Interested persons" are those who reasonably may be expected to be affected by the outcome of the particular proceeding. § 731.201(21), Fla.Stat. (1985).

[3] Florida Rule of Probate and Guardianship 5.042(c), provides that unless a motion is to be heard ex parte, a copy of the notice of the hearing on the motion must be served a reasonable length of time prior to the hearing. We find that two-day notice is not a reasonable length of time. See *Reynolds v. Reynolds*, 187 So.2d 372 (Fla. 2d DCA 1966); see also, *Hernandez v. Ward*, 437 So.2d 781 (Fla. 2d DCA 1983).

Montgomery v. Cribb, 484 So.2d 73 (1986)

11 Fla. L. Weekly 569

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[4] Appellees argue they were privileged to proceed ex parte in this matter because, following this court's denial of appellant's motion to set aside the voluntary dismissal of the summary judgment appeal, appellant was no longer an "interested person." We disagree. Appellant remains an "interested person" in these proceedings because an appeal is pending on an issue pertaining to his claim against the estate. Appellant, therefore, was entitled to reasonable notice, and we, accordingly, reverse the trial court's order granting the motion to strike. Upon remand, after the appellant is given reasonable notice, the court may again rule upon the motion to strike.

Reversed and remanded for proceedings consistent herewith.

GRIMES, A.C.J., and DANAHY and SCHOONOVER, JJ., concur.

All Citations

484 So.2d 73, 11 Fla. L. Weekly 569

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# **EXHIBIT D**

In re Estate of Bell, 573 So.2d 57 (1990)

16 Fla. L. Weekly 37

573 So.2d 57

District Court of Appeal of Florida,  
First District.

In re the ESTATE OF Katherine V. BELL,  
also known as Virginia Bell, Deceased.  
William HUNTER, Daniel Hunter and  
Marywil Hunter Croson, Appellants,

v.

Oleta JOHNSON, Personal Representative  
of the Estate of Katherine V. Bell,  
also known as Virginia Bell, Appellee.

No. 90-1318.

|

Dec. 26, 1990.

Will beneficiaries moved to compel production of estate assets or to remove another beneficiary as personal representative. The Circuit Court, Hamilton County, David E. Bemby, J., denied motion, and beneficiaries appealed. The District Court of Appeal, Nimmons, J., held that certificates of deposit were estate assets, even though beneficiary who was also personal representative was listed as trust beneficiary on one and co-owner of other, absent language in the power of attorney expressly authorizing gift of testatrix' assets to beneficiary.

Reversed in part; affirmed in part; and remanded.

West Headnotes (3)

[1] **Executors and Administrators**

↔ Trust Estates and Other Equitable Estates and Interests

**Executors and Administrators**

↔ Ownership of Property at Time of Death

**Principal and Agent**

↔ Purpose and Terms of and Consideration for Sale or Conveyance

Certificates of deposit purchased under power of attorney by beneficiary with testatrix' funds were assets of testatrix' estate, even though beneficiary was listed as trust beneficiary on one certificate and co-owner of other, where

power of attorney did not expressly authorize gift of testatrix' assets to beneficiary, and where testatrix did not document wish to make gift although she had ample opportunity to do so.

3 Cases that cite this headnote

[2] **Witnesses**

↔ Agency

Dead man's statute barred testimony of will beneficiary as to statements evidencing testatrix' intent to authorize gift to beneficiary under power of attorney. West's F.S.A. § 90.602.

4 Cases that cite this headnote

[3] **Executors and Administrators**

↔ Hostility or Adverse Interest

Personal representative who held conflicting and adverse interests against estate was required to be removed, where personal representative had purchased certificates of deposit under power of attorney for her own benefit with testatrix' funds, and where court found certificates were estate assets.

2 Cases that cite this headnote

**Attorneys and Law Firms**

\*57 Thomas W. Brown and Donna Houghton Thames of Brannon, Brown, Haley, Robinson & Cole, P.A., Lake City, for appellants.

\*58 David D. Eastman of Parker, Skelding, Labasky & Conry, Tallahassee, for appellee.

**Opinion**

NIMMONS, Judge.

Appellants, beneficiaries of decedent Katherine V. Bell's will, appeal a final order denying their motion to compel production of estate assets or remove the personal representative, and finding two certificates of deposit are not estate assets. We reverse in part and affirm in part.

In re Estate of Bell, 573 So.2d 57 (1990)

16 Fla. L. Weekly 37

On January 7, 1985, Katherine V. Bell, also known as Virginia Bell, executed her last will and testament. In the will she bequeathed all funds remaining in her estate, after debts had been paid, to Oleta Johnson (a first cousin), Marywil Hunter Croson (a niece), William Miles Hunter, Jr. (a nephew), and Daniel Thomas Hunter (a nephew), to be divided equally among them. Bell also bequeathed her home, the land upon which it was situated, and all household furniture and fixtures to Oleta Johnson, and named Johnson personal representative. At the same time the will was drawn, Bell executed a power of attorney naming Oleta Johnson as attorney-in-fact. Both of these documents were executed approximately three weeks after Bell entered a nursing home where she remained until her death on February 21, 1989. There was no dispute that Ms. Bell was alert and mentally competent until a few weeks before she passed away.

On April 12, 1985, Johnson, using the power of attorney, purchased with \$37,000 of Bell's funds a certificate of deposit in that sum at the First Federal Savings and Loan Association of Live Oak. That CD was set up with Bell's name as "trustee" and Oleta Johnson as "beneficiary." On July 12, 1985, in a similar fashion, Johnson purchased with \$40,000 of Bell's funds another Certificate of Deposit at the Hamilton County Bank, n/k/a Barnett Bank. That CD was set up in the names of "Katherine V. Bell or Oleta Johnson."

Following Bell's death, Johnson filed a petition for administration and was appointed as personal representative. In an inventory filed by Johnson, the two CD's were referred to with the statement that, notwithstanding the names of the owners of the CD's as reflected on the certificates themselves, Johnson intended "that all of the principal and accrued interest of [the certificates] shall be a part of the estate assets."

The appellants objected to the appellee's accounting of funds and monies received or disbursed from the estate, so the trial court required a full and complete accounting of all the estate funds from the time Johnson became cosigner on any of the decedent's accounts or from January 1, 1985, whichever was first.

A special report prepared by a certified public accountant was submitted, but the appellants remained unsatisfied and filed another motion to compel the personal

representative to make a full and complete accounting of the decedent's funds, including receipts from interest on the certificates of deposit, income tax refunds, and rental income. At the hearing on the motion, Johnson testified that she and Bell, her cousin, enjoyed a close relationship for over twenty years and when Bell was ill, Johnson willingly took care of her and visited her in the nursing home at least three times a week. Johnson testified Bell gave her the interest checks on the certificates of deposit after reviewing them and Johnson, with her power of attorney, would sign Bell's name to them. Johnson also testified the tenants renting Bell's home simply made the rental checks out to Johnson per Bell's wishes. Johnson indicated none of the other beneficiaries were close to Bell and had visited only a few times in the previous forty years.

The trial judge denied the appellants' motion to compel and the appellants filed another motion to compel production of the assets or, in the alternative, to remove the personal representative. Johnson filed a motion to withdraw the certificates of deposit from the estate's assets. In the trial court's order, the appellants' motion was denied and the certificates of deposit, the decedent's house, and all rental income associated with it were found to be the personal property of Johnson.

\*59 The appellants raise three issues on appeal: (1) whether the trial court erred in finding the two certificates of deposit were not estate assets; (2) whether the trial court erred in denying the appellants' motion to compel a full and complete accounting; and (3) whether the trial court erred in not removing the personal representative based on a conflict of interest.

According to *Johnson v. Fraccacreta*, 348 So.2d 570 (Fla. 4th DCA 1977), a general power of attorney does not give the agent authority to make a gift of the principal's property. A conveyance that exceeds the scope of the power of attorney is void. In *Fraccacreta*, the decedent owned real property and, several months before her death, executed a power of attorney appointing her daughter as attorney-in-fact. The daughter used her power of attorney to execute a warranty deed conveying the decedent's property to the decedent and her husband as tenants by the entireties. The administrator ad litem brought the action contending the power of attorney did not authorize the attorney-in-fact/agent to make a gift. The court agreed and held that in construing an instrument creating a power of attorney, the court must look to the language of the

In re Estate of Bell, 573 So.2d 57 (1990)

16 Fla. L. Weekly 37

instrument and that an agent has no power to make a gift of the principal's property unless that power is expressly conferred by the instrument or unless such power arises as a necessary implication from the powers which are expressly conferred.

[1] [2] The power of attorney executed by Ms. Bell in the case at bar is devoid of any language purporting to authorize Johnson to use Ms. Bell's funds to purchase certificates of deposit in such a way as to create an individual pecuniary interest in Johnson. Furthermore, there were no witnesses to any oral agreement that may have existed between Bell and Johnson. Johnson is precluded, pursuant to the Dead Man's Statute,<sup>1</sup> from testifying as to any statements Bell may have made evidencing her intent to authorize Johnson to appropriate Bell's property for Johnson's own use and benefit.

Under *Hodges v. Surratt*, 366 So.2d 768 (Fla. 2d DCA 1978), the court held the attorney-in-fact for the decedent violated her fiduciary duty by transferring the principal's property to her husband and appropriating funds in the checking account for her own use absent clear language in the power of attorney authorizing such actions.

*Hodges* was cited with approval in *Krevatas v. Wright*, 518 So.2d 435 (Fla. 1st DCA 1988). Krevatas was a close friend and neighbor of Mrs. Fambrough, a childless widow with no local relatives. Mrs. Fambrough executed a power of attorney designating Krevatas attorney-in-fact and delivered it to him three years later. Approximately three weeks before she died, Fambrough changed her checking account, the balance of which never exceeded \$6,000, to a survivorship account, adding Krevatas' name. She also, via her will, left \$20,000 and her car to Krevatas, and during her last few weeks, signed documents making gifts to Krevatas and others. Krevatas used the power of attorney to transfer \$100,000 into the survivorship account from her other accounts and altered existing CD's totalling \$25,000 so that he and one of Mrs. Fambrough's nieces would have survivorship rights.

The court noted an absence of evidence indicating Mrs. Fambrough participated in the transfer of money into her checking account or the creation of survivorship interests in her certificates of deposit. Additionally, the court found Mrs. Fambrough did not intend to give Krevatas more money than was in the checking account at the time she changed it to a survivorship account. This apparent lack

of intent was based on the fact that Mrs. Fambrough documented a gift to Krevatas in the last few weeks of her life while she was still alert when she easily could have documented her desire for him to have the money. The court found that neither the power of attorney itself nor the circumstances surrounding the execution of the document demonstrated an express or implied authority for Krevatas to use the power for his personal benefit.

\*60 In the case at bar, the facts indicate that the will and the power of attorney were executed approximately three weeks after Ms. Bell entered a nursing home where she remained alert for several years prior to her death in 1989. She had ample opportunity to document in writing her wishes regarding the disposition of her estate assets. However, the language of the power of attorney does not expressly authorize Johnson to make a gift of Bell's assets for her own personal benefit, nor does the will evidence Bell's intent for Johnson to have the funds. Further, there is no evidence of implied authorization from the circumstances surrounding the execution of the documents. Therefore, we reverse the trial court's finding that the two certificates of deposit were not estate assets.<sup>2</sup>

[3] In reversing the first issue, we must also reverse the third issue. According to Section 733.504(9), Florida Statutes, a personal representative may be removed for holding or acquiring conflicting or adverse interests against the estate which will adversely interfere with the administration of the estate as a whole. In holding that the certificates of deposit are to be considered estate assets, a conflict between the personal representative and the estate is created, requiring Johnson's removal as personal representative.

We affirm as to the second issue, since the trial court did not err in failing to compel a full and complete accounting. It is obvious from the record that the appellee testified as to the whereabouts of the funds the appellants claim are unaccounted for. The trial court did not err in refusing to order another accounting.

Accordingly, we reverse in part and affirm in part and remand for further proceedings consistent with this opinion.

SMITH and ZEHMER, JJ., concur.

In re Estate of Bell, 573 So.2d 57 (1990)

16 Fla. L. Weekly 37

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**All Citations**

573 So.2d 57, 16 Fla. L. Weekly 37

**Footnotes**

1

Section 90.602, Florida Statutes.

2

The trial court's order relied in part upon Section 658.56, Florida Statutes. However, that section has no application to the case at bar because Bell had nothing to do with the purchase of the two CD's.

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# **EXHIBIT E**

731.201. General definitions, FL ST § 731.201

West's Florida Statutes Annotated  
Title XLII. Estates and Trusts (Chapters 731-740) (Refs & Annos)  
Chapter 731. Probate Code: General Provisions (Refs & Annos)  
Part II. Definitions

West's F.S.A. § 731.201

**731.201.** General definitions

Effective: October 1, 2013

Currentness

Subject to additional definitions in subsequent chapters that are applicable to specific chapters or parts, and unless the context otherwise requires, in this code, in s. 409.9101, and in chapters 736, 738, 739, and 744, the term:

(1) "Authenticated," when referring to copies of documents or judicial proceedings required to be filed with the court under this code, means a certified copy or a copy authenticated according to the Federal Rules of Civil Procedure.

(2) "Beneficiary" means heir at law in an intestate estate and devisee in a testate estate. The term "beneficiary" does not apply to an heir at law or a devisee after that person's interest in the estate has been satisfied. In the case of a devise to an existing trust or trustee, or to a trust or trustee described by will, the trustee is a beneficiary of the estate. Except as otherwise provided in this subsection, the beneficiary of the trust is not a beneficiary of the estate of which that trust or the trustee of that trust is a beneficiary. However, if each trustee is also a personal representative of the estate, each qualified beneficiary of the trust as defined in s. 736.0103 shall be regarded as a beneficiary of the estate.

(3) "Child" includes a person entitled to take as a child under this code by intestate succession from the parent whose relationship is involved, and excludes any person who is only a stepchild, a foster child, a grandchild, or a more remote descendant.

(4) "Claim" means a liability of the decedent, whether arising in contract, tort, or otherwise, and funeral expense. The term does not include an expense of administration or estate, inheritance, succession, or other death taxes.

(5) "Clerk" means the clerk or deputy clerk of the court.

(6) "Collateral heir" means an heir who is related to the decedent through a common ancestor but who is not an ancestor or descendant of the decedent.

(7) "Court" means the circuit court.

(8) "Curator" means a person appointed by the court to take charge of the estate of a decedent until letters are issued.

**731.201. General definitions, FL ST § 731.201**

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(9) "Descendant" means a person in any generational level down the applicable individual's descending line and includes children, grandchildren, and more remote descendants. The term "descendant" is synonymous with the terms "lineal descendant" and "issue" but excludes collateral heirs.

(10) "Devise," when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will or trust. The term includes "gift," "give," "bequeath," "bequest," and "legacy." A devise is subject to charges for debts, expenses, and taxes as provided in this code, the will, or the trust.

(11) "Devisee" means a person designated in a will or trust to receive a devise. Except as otherwise provided in this subsection, in the case of a devise to an existing trust or trustee, or to a trust or trustee of a trust described by will, the trust or trustee, rather than the beneficiaries of the trust, is the devisee. However, if each trustee is also a personal representative of the estate, each qualified beneficiary of the trust as defined in s. 736.0103 shall be regarded as a devisee.

(12) "Distributee" means a person who has received estate property from a personal representative or other fiduciary other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increments to them remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(13) "Domicile" means a person's usual place of dwelling and shall be synonymous with residence.

(14) "Estate" means the property of a decedent that is the subject of administration.

(15) "Exempt property" means the property of a decedent's estate which is described in s. 732.402.

(16) "File" means to file with the court or clerk.

(17) "Foreign personal representative" means a personal representative of another state or a foreign country.

(18) "Formal notice" means a form of notice that is described in and served by a method of service provided under rule 5.040(a) of the Florida Probate Rules.

(19) "Grantor" means one who creates or adds to a trust and includes "settlor" or "trustor" and a testator who creates or adds to a trust.

(20) "Heirs" or "heirs at law" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

**731.201. General definitions, FL ST § 731.201**

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(21) "Incapacitated" means a judicial determination that a person lacks the capacity to manage at least some of the person's property or to meet at least some of the person's essential health and safety requirements. A minor shall be treated as being incapacitated.

(22) "Informal notice" or "notice" means a method of service for pleadings or papers as provided under rule 5.040(b) of the Florida Probate Rules.

(23) "Interested person" means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. In any proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate shall be deemed to be an interested person. In any proceeding affecting the expenses of the administration and obligations of a decedent's estate, or any claims described in s. 733.702(1), the trustee of a trust described in s. 733.707(3) is an interested person in the administration of the grantor's estate. The term does not include a beneficiary who has received complete distribution. The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.

(24) "Letters" means authority granted by the court to the personal representative to act on behalf of the estate of the decedent and refers to what has been known as letters testamentary and letters of administration. All letters shall be designated "letters of administration."

(25) "Minor" means a person under 18 years of age whose disabilities have not been removed by marriage or otherwise.

(26) "Other state" means any state of the United States other than Florida and includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(27) "Parent" excludes any person who is only a stepparent, foster parent, or grandparent.

(28) "Personal representative" means the fiduciary appointed by the court to administer the estate and refers to what has been known as an administrator, administrator cum testamento annexo, administrator de bonis non, ancillary administrator, ancillary executor, or executor.

(29) "Petition" means a written request to the court for an order.

(30) "Power of appointment" means an authority, other than as an incident of the beneficial ownership of property, to designate recipients of beneficial interests in property.

(31) "Probate of will" means all steps necessary to establish the validity of a will and to admit a will to probate.

(32) "Property" means both real and personal property or any interest in it and anything that may be the subject of ownership.

**731.201. General definitions, FL ST § 731.201**

(33) "Protected homestead" means the property described in s. 4(a)(1), Art. X of the State Constitution on which at the death of the owner the exemption inures to the owner's surviving spouse or heirs under s. 4(b), Art. X of the State Constitution. For purposes of the code, real property owned in tenancy by the entireties or in joint tenancy with rights of survivorship is not protected homestead.

(34) "Residence" means a person's place of dwelling.

(35) "Residuary devise" means a devise of the assets of the estate which remain after the provision for any devise which is to be satisfied by reference to a specific property or type of property, fund, sum, or statutory amount. If the will contains no devise which is to be satisfied by reference to a specific property or type of property, fund, sum, or statutory amount, "residuary devise" or "residue" means a devise of all assets remaining after satisfying the obligations of the estate.

(36) "Security" means a security as defined in s. 517.021.

(37) "Security interest" means a security interest as defined in s. 671.201.

(38) "Trust" means an express trust, private or charitable, with additions to it, wherever and however created. It also includes a trust created or determined by a judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts; conservatorships; custodial arrangements pursuant to the Florida Uniform Transfers to Minors Act;<sup>1</sup> business trusts providing for certificates to be issued to beneficiaries; common trust funds; land trusts under s. 689.071, except to the extent provided in s. 689.071(7); trusts created by the form of the account or by the deposit agreement at a financial institution; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

(39) "Trustee" includes an original, additional, surviving, or successor trustee, whether or not appointed or confirmed by court.

(40) "Will" means an instrument, including a codicil, executed by a person in the manner prescribed by this code, which disposes of the person's property on or after his or her death and includes an instrument which merely appoints a personal representative or revokes or revises another will.

**Credits**

Laws 1974, c. 74-106, § 1; Laws 1975, c. 75-220, § 4; Laws 1977, c. 77-174, § 1; Laws 1985, c. 85-79, § 2; Laws 1987, c. 87-226, § 66; Laws 1988, c. 88-340, § 1; Laws 1993, c. 93-257, § 7. Amended by Laws 1995, c. 95-401, § 6, eff. July 1, 1995; Laws 1997, c. 97-102, § 949, eff. July 1, 1997; Laws 1998, c. 98-421, § 52, eff. July 1, 1998; Laws 2001, c. 2001-226, § 11, eff. Jan. 1, 2002; Laws 2002, c. 2002-1, § 106, eff. May 21, 2002; Laws 2003, c. 2003-154, § 2, eff. June 12, 2003; Laws 2005, c. 2005-108, § 2, eff. July 1, 2005; Laws 2006, c. 2006-217, § 29, eff. July 1, 2007; Laws 2007, c. 2007-74, § 3, eff. July 1, 2007; Laws 2007, c. 2007-153, § 8, eff. July 1, 2007; Laws 2009, c. 2009-115, § 1, eff. July 1, 2009; Laws 2010, c. 2010-132, § 4, eff. Oct. 1, 2010; Laws 2012, c. 2012-109, § 1, eff. July 1, 2012; Laws 2013, c. 2013-172, § 16, eff. Oct. 1, 2013.

**Editors' Notes**

**APPLICABILITY**

<The introductory language to § 1 of Laws 2012, c. 2012-109, provides:>

<“Effective July 1, 2012, and applicable to proceedings pending before or commenced on or after July 1, 2012, subsection (33) of section 731.201, Florida Statutes, is amended to read:”>

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**Footnotes**

1

See § 710.101 et seq.

West's F. S. A. § 731.201, FL ST § 731.201

Current through the 2016 Second Regular Session of the Twenty-Fourth Legislature.

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# **EXHIBIT F**

West's Florida Statutes Annotated

Title XLII. Estates and Trusts (Chapters 731-740) (Refs & Annos)

Chapter 733. Probate Code: Administration of Estates (Refs & Annos)

Part VI. Duties and Powers of Personal Representative

West's F.S.A. § 733.602

**733.602.** General duties

Effective: July 1, 2009

Currentness

(1) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of the decedent's will and this code as expeditiously and efficiently as is consistent with the best interests of the estate. A personal representative shall use the authority conferred by this code, the authority in the will, if any, and the authority of any order of the court, for the best interests of interested persons, including creditors.

(2) A personal representative shall not be liable for any act of administration or distribution if the act was authorized at the time. Subject to other obligations of administration, a probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a proceeding challenging intestacy or a proceeding questioning the appointment or fitness to continue. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of interested persons.

#### Credits

Laws 1974, c. 74-106, § 1; Laws 1975, c. 75-220, § 74; Laws 1977, c. 77-87, § 27; Laws 1977, c. 77-174, § 1; Laws 1979, c. 79-400, § 270; Laws 1989, c. 89-340, § 3. Amended by Laws 1997, c. 97-102, § 1001, eff. July 1, 1997; Laws 2001, c. 2001-226, § 125, eff. Jan. 1, 2002; Laws 2006, c. 2006-217, § 37, eff. July 1, 2007; Laws 2009, c. 2009-115, § 11, eff. July 1, 2009.

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# **EXHIBIT G**

West's Florida Statutes Annotated  
Title XLII. Estates and Trusts (Chapters 731-740) (Refs & Annos)  
Title 42-Appendix I Probate Rules (Refs & Annos)  
Part II. Probate

Fla.Prob.R. Rule **5.440**

Rule **5.440**. Proceedings for Removal of Personal Representative

Currentness

**(a) Commencement of Proceeding.** The court on its own motion may remove, or any interested person by petition may commence a proceeding to remove, a personal representative. A petition for removal shall state the facts constituting the grounds upon which removal is sought, and shall be filed in the court having jurisdiction over the administration of the estate.

**(b) Accounting.** A removed personal representative shall file an accounting within 30 days after removal.

**(c) Delivery of Records and Property.** A removed personal representative shall, immediately after removal or within such time prescribed by court order, deliver to the remaining personal representative or to the successor fiduciary all of the records of the estate and all of the property of the estate.

**(d) Failure to File Accounting or Deliver Records and Property.** If a removed personal representative fails to file an accounting or fails to deliver all property of the estate and all estate records under the control of the removed personal representative to the remaining personal representative or to the successor fiduciary within the time prescribed by this rule or by court order, the removed personal representative shall be subject to contempt proceedings.

**Credits**

Amended Sept. 4, 1980, effective Jan. 1, 1981 (387 So.2d 949); Sept. 13, 1984, effective Jan. 1, 1985 (458 So.2d 1079); Sept. 29, 1988, effective Jan. 1, 1989 (537 So.2d 500); Sept. 24, 1992, effective Jan. 1, 1993 (607 So.2d 1306); May 2, 2002 (824 So.2d 849); July 12, 2007 (964 So.2d 140); Dec. 9, 2010 (51 So.3d 1146).

**Editors' Notes**

**COMMITTEE NOTES**

The revision of subdivision (a) of this rule by the addition of its final phrase represents a rule implementation of the procedure found in section 733.505, Florida Statutes. It is not intended to change the effect of the statute from which it was derived but has been reformatted to conform with the structure of these rules. It is not intended to create a new procedure or modify an existing procedure.

**Rule History**

1980 Revision: Subdivision (a) amended to require formal notice to interested persons and to delete requirement that court give directions as to mode of notice. Surety authorized to petition for removal.

**Rule 5.440. Proceedings for Removal of Personal..., FL ST PROB Rule 5.440**

1984 Revision: Editorial changes. Provisions in prior rule for contempt have been deleted since the court has the inherent power to punish for contempt. Committee notes revised.

1988 Revision: Last phrase of (a) added to implement the procedure found in section 733.505, Florida Statutes. Subdivision (b) amended to parallel interim accounting rules. Deletes ability to extend time to file and adds reference to court power to punish for contempt. Committee notes expanded. Editorial changes. Citation form changes in committee notes.

1992 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

2002 Revision: Entire rule amended. Contents of accountings by removed fiduciaries are now governed by rule 5.346. Editorial changes in (a), (c), and (d). Committee notes revised.

2003 Revision: Committee notes revised.

2007 Revision: Committee notes revised.

2010 Revision: Editorial change in title to clarify scope of rule.

2012 Revision: Committee notes revised.

**Statutory References**

§ 731.201(23), Fla. Stat. General definitions.

§ 733.504, Fla. Stat. Removal of personal representative; causes of removal.

§ 733.505, Fla. Stat. Jurisdiction in removal proceedings.

§ 733.506, Fla. Stat. Proceedings for removal.

§ 733.5061, Fla. Stat. Appointment of successor upon removal.

§ 733.508, Fla. Stat. Accounting and discharge of removed personal representatives upon removal.

§ 733.509, Fla. Stat. Surrender of assets upon removal.

**Rule References**

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and documents.

Fla. Prob. R. 5.042 Time.

**Rule 5.440. Proceedings for Removal of Personal..., FL ST PROB Rule 5.440**

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Fla. Prob. R. 5.150 Order requiring accounting.

Fla. Prob. R. 5.310 Disqualification of personal representative; notification.

Fla. Prob. R. 5.345 Accountings other than personal representatives' final accountings.

Fla. Prob. R. 5.346 Fiduciary accounting.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

**RESEARCH REFERENCES**

**Forms**

Florida Pleading and Practice Forms § 53:64, Petition--To Remove Personal Representative [§§ 733.504 to 733.506, Fla. Stat.; Fla. Prob. R. **5.440**].

Florida Pleading and Practice Forms § 53:66, Petition--By Interested Party--Maladministration [§ 733.504(5), Fla. Stat.; Fla. Prob. R. **5.440**].

Notes of Decisions containing your search terms (0)

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West's F.S.A. Title 42, App. 1, Prob. Rule **5.440**, FL ST PROB Rule **5.440**

Florida Supreme Court Rules of Civil Procedure, Judicial Administration, Criminal Procedure, Civil Procedure for Involuntary Commitment of Sexually Violent Predators, Worker's Compensation, Probate, Traffic Court, Small Claims, Juvenile Procedure, Appellate Procedure, Certified and Court-Appointed Mediators, Court Appointed Arbitrators, Family Law, Certification and Regulation of Court Reporters, Certification of Spoken Language Interpreters, and Qualified and Court-Appointing Parenting Coordinators are current with amendments received through 06/01/16. All other State Court Rules are current with amendments received through 06/01/16.

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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION**

Simon Bernstein Irrevocable  
Insurance Trust Dtd 6/21/95, et al.,

Plaintiffs,

v.

Heritage Union Life  
Insurance Co., et al.,

Defendants.

Case No. 13-cv-3643  
Judge John Robert Blakey

Filers:  
Eliot Ivan Bernstein, Pro Se

**Non-Movant Third Party Defendant Eliot I. Bernstein's Affidavit-Declaration In Opposition  
to Intervenor's Motion for Summary Judgement**

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1. I am the non-moving party in this matter opposing the Intervenor's motion for Summary Judgment and otherwise designated as a Third-Party Defendant pro se.
2. I am a natural son to Simon Bernstein and a natural beneficiary herein.
3. If called to testify, I would willingly and voluntarily be expected to testify in this matter as set out herein.
4. I had a close and personal relationship with my father Simon Bernstein throughout his lifetime and am familiar with the various insurance businesses he conducted over the course of the last 30 plus years.
5. In fact, during one period of time I had my own business in California that worked together with my father's businesses whereby I would sell his proprietary Life Insurance products my company would receive commissions from my father's businesses.
6. I was the leading producer for my father's companies for many years through my insurance agencies and my agents nationwide.
7. My father was a meticulous record keeper not only for himself but for all of his thousands of clients nationwide and he owned and operated multiple insurance agencies and

insurance related trust companies. My father created and marketed "Arbitrage Life Payment System: and managed approximately a billion dollars of insurance premium financing annually.

8. My father's Florida offices had storerooms of files for his clients and in fact maintained a mass of files regarding our technology companies and proprietary intellectual properties for my inventions, of which my father was a 30% owner of the companies and IP and I was 70% owner originally. My father was also Chairman of the Board in the beginning of the these technology companies.
9. My father was a leading producer of life insurance throughout his entire career in the insurance business and was the largest producer for several carriers nationwide.
10. My father was an expert in Estate and Trust planning and worked with extremely high net worth individuals (including several billion clients of mine) and businesses in placing insurance to protect their families and businesses. He designed proprietary insurance products that use complex trusts to achieve protection of the insurance from creditors and others and maximize the benefits. His plans he designed include VEBA's and Arbitrage Life Payment System both sold nationally through an extensive network of agents.
11. My father would never create a trust or have a client create a trust where any incident of ownership were maintained in the policy, which would invalidate the trust and leave the benefits open to risk.
12. On September 13, 2012, the day my father died, upon trying to log in to my father Simon's computer at his home to get his personal friends contact information to notify them of Simon's passing I noticed that the hard drives on all of Simon's computers in his home were missing or scrubbed and Petitioner found this highly irregular. Theodore stated he would look into where they had gone and question several people who

handled Simon's computers at his office and home if they knew anything. To this date those items appear to have been taken from the estate and never recovered.

13. That Simon's assistant Rachel Walker claimed only a few minutes after my father died upon returning to the hospital that she left the hospital while he was code blue and dying and went to Simon's home and stated to both me and my wife Candice (who went with her to the home) that she grabbed anything estate planning looking that she could find from his home files, including trusts, wills, etc., he had stored in his home office and claimed that Ted Bernstein had requested her to do at the hospital as Simon lay dying. When Ted was initially questioned by me about what was in the package Walker had given him Ted claimed they were estate documents, including trusts, wills, some medical records and some insurance documents. I requested copies and inventory of the documents removed and an inventory of the personal effects of my father he had taken from the hospital and Ted stated he would have copies and inventories of the items removed from the estate Post Mortem for everyone later that day. To this date I have never received the inventories or accounting for anything removed from the estate or Simon's personal effects taken from the hospital.
14. Initially after my father's death, both my sister and brother both claimed to have copies of his insurance policy involved in this litigation and when I demanded they turn them over they suddenly claimed that did not possess them and also then claimed not to have the trust that they were alleging was the beneficiary.
15. My father had made estate plans for my family and had promised me several million dollars was set aside for my interests in his insurance companies for compensation for a breach of contract by my sister Pam who failed to pay me contracted commissions and percentages of several hundred million dollars I raised with my agents for premium financing once she acquired the business from my father. This was my compensation

for the many years I worked for his companies and helped build them and did not get stock as my sister did.

16. Because of life threatening dangers my family was placed in when we discovered our patent attorneys from Proskauer Rose, Foley & Lardner and others were attempting to steal our IP and force us out of business and as federal and state complaints were filed a bomb went off in my family's vehicles. My father at that time set up a company, Bernstein Family Realty LLC and opened up trusts for my children who owned BFR to hold the entity and protect us from those trying to harm us financially and physically. In 2008 he and my mother created trusts and the Eliot Bernstein Family Trust was created as the vehicle to receive  $\frac{1}{3}$  of the trust assets. The reason I would receive  $\frac{1}{3}$  of the trust assets was because although there are five children, Ted and my sister Pam and their lineal descendants were wholly disinherited by my parents in the trusts, leaving only three children with interest. My father for many years prior to his death ran all of my family's expenses through BFR and put a home my children bought into their trusts, again all of this to protect my family and make sure that no matter what happened to me, my children and wife income would be taken care of while he was living and through my inheritancy long after he was dead.
17. My father and mother's relationship with my sister Pam and my brother Ted were strained for several years prior to their deaths.
18. That a scheme to defraud started at least by the time of my father's passing and likely dates back to at least 2010 with some of the parties at play such as Robert Spallina as shown by an All Writs Petition filed with this Court in Feb. of 2016 and that I have diligently filed with police and investigatory authorities to pursue the frauds herein and have filed multiple documents with the Florida Courts and this Court showing and claiming fraud and collusion and civil conspiracy and that my Answer and Counterclaims

herein, opposition to Plaintiffs' original Summary Judgment and Petition for All Writs filed in Feb. of 2016 with this Court support such claims.

19. Thus, what reasonable jurors could conclude in this case is that
- a) Being in the Insurance business himself for 50 years, Simon Bernstein in fact had at least one Policy of Life Insurance;
  - b) Being in the industry for 50 years and skilled in asset protection, Simon Bernstein in fact had a proper Trust to keep such policy proceeds out of his Estate;
  - c) Being successful in the business for 50 years and earning millions of dollars in the industry, Simon Bernstein was well aware of the need for accurate Record keeping and in fact had kept meticulous records;
  - d) That the absence of such records and actual policy and actual Trust from this Court is the product of conspiracy, collusion and intentional design by a variety of parties to keep proper proceeds from the rightful beneficiaries and that I and my children are some of those rightful beneficiaries;
  - e) That the Estate acting through PR O'Connell and Trial Counsel Stamos have deliberately failed to take proper action to find and produce the Records of Simon Bernstein in this case and that at least PR O'Connell has directly colluded with Ted Bernstein and his counsel.

WHEREFORE, Third-party Defendant pro se and non-movant Eliot I. Bernstein respectfully prays for an Order denying Summary Judgment to the Intervenor at this time and for the opening of Discovery as needed and for such other and further relief as to this Court may seem just and proper.

**Declaration**

I, Eliot I. Bernstein, declare, certify and state under penalties of perjury that the foregoing is true

and correct.

**/s/ Eliot Ivan Bernstein**

Executed on: August 26, 2016

**/s/ Eliot Ivan Bernstein**

Third Party Defendant/Cross

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